Supreme Court, U.S.
FILED

No. 95-___

95-286 AUG 17 1995

In The

OFFICE OF THE CLERK

Supreme Court of the United States

October Term, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,

Petitioners,

v.

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal, First Circuit, State Of Louisiana

PETITION FOR A WRIT OF CERTIORARI

CHARLES M. DARLING, IV
KIRK K. VAN TINE
BAKER & BOTTS, L.L.P.
The Warner
1299 Pennsylvania Ave., NW
Washington, D.C. 20004
(202) 639-7700

CLAUDIA WILSON FROST
JANE NENNINGER BLAND
MACEY REASONER STOKES
BAKER & BOTTS, L.L.P.
910 Louisiana
Houston, TX 77002
(713) 229-1234

J. EDGERTON PIERSON, JR.
Counsel of Record
PIKE HALL, JR.
J. DAVID GARRETT
BLANCHARD, WALKER, O'QUIN & ROBERTS
(A Professional Law Corp.)
Post Office Drawer 1126
Shreveport, LA 71163
(318) 221-6858

KEITH A. JONES
BECK, REDDEN & SECREST
1331 Lamar Street
Houston, TX 77010
(713) 659-8140

Counsel for Petitioners

August 17, 1995

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

109 pp

QUESTION PRESENTED

Whether the State of Louisiana can constitutionally impose a severance tax on oil and gas extracted from Barksdale Air Force Base lands notwithstanding this Court's ruling in *Humble Pipe Line Co. v. Waggonner*, 376 U.S. 369 (1964), that Barksdale is a federal enclave subject to the exclusive legislative jurisdiction of the United States under Article I, Section 8, Clause 17 of the Constitution of the United States.

PARTIES TO THE PROCEEDING AND RULE 29.1 STATEMENT

Petitioners:

1. Mississippi River Transmission Corporation. Mississippi River Transmission Corporation is now the wholly-owned subsidiary of NorAm Energy Corp., and during the pendency of the proceedings below was the parent of MRT Exploration Company. MRT Exploration Company sold all of its interest in the leases in question, including all of its rights in and obligations arising pursuant to these proceedings, to Mississippi River Transmission Corporation; thereafter MRT Exploration Company was sold.

2. Murphy Exploration and Production Company. Murphy Exploration and Production Company is a wholly-owned subsidiary of Murphy Oil Corporation. During the pendency of the proceedings below Murphy Oil Corporation transferred all its interest in the leases in question, including all of its rights in and obligations arising pursuant to these proceedings, to its wholly-owned subsidiary, Murphy Oil USA, Inc., which was merged into Murphy Exploration and Production Company, also a wholly-owned subsidiary of Murphy Oil Corporation.

3. Pennzoil Exploration and Production Company. During the pendency of the proceedings below, all of the assets, rights, duties and obligations of Pennzoil Producing Company were merged into its parent company Pennzoil Company. Thereafter Pennzoil Company assigned

PARTIES TO THE PROCEEDING AND RULE 29.1 STATEMENT – Continued

all of these same assets, rights, duties and obligations to its wholly-owned subsidiary Pennzoil Exploration and Production Company.

4. TOTAL MINATOME CORPORATION. Texas Gas Exploration Corporation, an original petitioner in these proceedings, after a name change was merged into TOTAL MINATOME CORPORATION. TOTAL is a corporation incorporated under the laws of France which has the wholly-owned subsidiary TOTAL America, Inc., a Delaware corporation, which has the wholly-owned subsidiary TOTAL American Holding, Inc., of which TOTAL MINATOME CORPORATION is a wholly-owned subsidiary.

5. NorAm Energy Corp. During the pendency of the proceedings below, Arkla, Inc., an original petitioner, changed its name to NorAm Energy Corp. NorAm Energy Corp. does not have any subsidiaries which are not wholly-owned.

6. Rosewood Resources, Inc. Rosewood Resources, Inc. is the wholly-owned subsidiary of The Rosewood Corporation.

Respondent:

Respondent is the Secretary of the Louisiana Department of Revenue and Taxation and is charged by statute with administering the severance taxes imposed under Louisiana law.

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDING AND RULE 29.1 STATEMENT ii

TABLE OF CONTENTS iv

TABLE OF AUTHORITIES viii

OPINIONS BELOW 2

JURISDICTION 2

STATUTORY AND REGULATORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 4

A. Factual Background 4

B. Legal Background 7

C. Prior Proceedings In This Case 12

D. Presentation Of Federal Question To Lower Courts 15

REASONS FOR GRANTING THE PETITION 15

I. The Decision Of The Louisiana Court Conflicts With The Decision Of This Court In *Humble*, Decisions Of The United States Court Of Appeals For The Fifth Circuit And Federal District Court Decisions 18

A. The Louisiana Court Of Appeal Erred In Deciding That The Louisiana Severance Tax Was An Income Tax Under The Buck Act 18

TABLE OF CONTENTS – Continued

Page

B. Congress Did Not Retrocede To Louisiana The Power To Levy Severance Taxes Within The Barksdale Enclave With Its 1976 Amendment To The MLAAL..... 24

II. The Decision Of The Louisiana Court Of Appeal Unsettles The Settled Law In The Important Area Of Federal Enclave Jurisdiction..... 27

CONCLUSION 29

APPENDIX A Opinion, Louisiana Court of Appeal, First Circuit (December 29, 1994), reported at 648 So.2d 1108..... 1a

APPENDIX B Per Curiam Decision on Application for Writ of Certiorari, Supreme Court of Louisiana (May 19, 1995), reported at 654 So.2d 1083 ..... 17a

APPENDIX C Written Reasons For Judgment, 19th Judicial District Court of Louisiana In and For the Parish of East Baton Rouge (January 18, 1990) 19a

APPENDIX D Supplemental Written Reasons For Judgment, 19th Judicial District Court of Louisiana In and For the Parish of East Baton Rouge (January 21, 1990) 26a

APPENDIX E Judgment, 19th Judicial District Court of Louisiana In and For the Parish of East Baton Rouge (September 15, 1993)..... 28a

TABLE OF CONTENTS – Continued

Page

APPENDIX F Memorandum Opinion, United States District Court for the Western District of Louisiana (May, 1990 unpublished) 33a

APPENDIX G Constitutional and Statutory Provisions 54a

Mineral Leasing Act for Acquired Lands §§ 3, 8 and 9 ... 54a

The Federal Coal Leasing Amendments Act of 1975, § 12 ... 56a

Buck Act §§ 2(a) and 6(c) 56a

Constitution of the State of Louisiana of 1921, Article X, §§ 1 and 21 ..... 57a

Constitution of the State of Louisiana of 1974, Article VII, § 4 ..... 58a

Louisiana Revised Statutes, Titled 47:

§ 31 ..... 59a

§ 631 ..... 60a

§ 632 ..... 60a

§ 633(7)(a) [Prior to 1973 amendment] 61a

§ 633(7)(a) [Subsequent to 1973 amendment] 62a

§ 633(8) [Prior to 1973 amendment] 63a

TABLE OF CONTENTS – Continued

Page

§ 633(8) [Subsequent to 1973 amendment] 63a

§ 633(9)..... 64a

1892 La. Acts No. 12..... 65a

TABLE OF AUTHORITIES

Page

CONSTITUTION OF THE UNITED STATES OF AMERICA

Article I, Section 8, Clause 17 ..... 2, 4, 5, 6, 7, 8, 14, 15, 16, 17

Article VI, Clause 2 ..... 3, 15

CONSTITUTION OF THE STATE OF LOUISIANA OF 1921

Article X, Section 1 ..... 3, 10

Article X, Section 21 ..... 3, 10, 22

CONSTITUTION OF THE STATE OF LOUISIANA OF 1974

Article VII, Section 4 ..... 3, 10

STATUTES OF THE UNITED STATES

Buck Act, Pub. L. No. 819, 54 Stat. 1059 (1940) (codified as amended at 4 U.S.C. §§ 105-110) 3, 8, 9, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22

Mineral Leasing Act of 1920, Pub. L. No. 146, 41 Stat. 437 (1920) (codified as amended at 30 U.S.C. §§ 181-263) 10

Mineral Leasing Act for Acquired Lands, Pub. L. No. 382, 61 Stat. 907 (1947) (codified as amended at 30 U.S.C. §§ 351-359) ..... *passim*

The Federal Coal Leasing Amendments Act of 1975, Pub. L. No. 94-377, 90 Stat. 1083 (1976) 3, 11, 16, 23, 24, 25, 26

28 U.S.C. § 1257 2

28 U.S.C. § 1341 6

TABLE OF AUTHORITIES – Continued

Page

ACT OF THE LOUISIANA LEGISLATURE

1892 La. Acts No. 12 ..... 3, 4, 5, 8, 18

LA. REVISED STATUTES

La. R.S. 47:31 3

La. R.S. 47:631 ..... 3, 22

La. R.S. 47:632 ..... 3, 22

La. R.S. 47:633 3

CASES

Burns v. State, 439 P.2d 702 (N.M.), *cert. denied*, 393 U.S. 841 (1968) 21

City of Portsmouth v. Fred C. Gardner Co., 211 S.E.2d 259 (Va. 1975) 21

Commonwealth Edison Co. v. Montana, 453 U.S. 609 (1981) 5

Hancock v. Train, 426 U.S. 167 (1976) 8

Howard v. Commissioners of Sinking Fund of Louisville, 344 U.S. 624 (1953) 20, 21

Humble Pipe Line Co. v. Waggonner, 376 U.S. 369 (1964) ..... *passim*

James v. Dravo Contracting Co., 302 U.S. 134 (1937) ..8, 17

Jefferson County v. Acker, 850 F. Supp. 1536 (N.D. Ala. 1994) 21

Kiker v. City of Philadelphia, 31 A.2d 289 (Pa.), *cert. denied*, 320 U.S. 741 (1943) 21

TABLE OF AUTHORITIES – Continued

Page

Lord v. Local Union No. 2088, Int'l Brotherhood of Elec. Workers, 646 F.2d 1057 (5th Cir. Unit B), *reh'g denied*, 654 F.2d 723 (5th Cir. 1981), *and cert. denied*, 458 U.S. 1106 (1982) 8, 26

Mississippi River Fuel Corp. v. Cocreham, 382 F.2d 929 (5th Cir. 1967), *reh'g denied*, 390 F.2d 34 (5th Cir.), *and cert. denied*, 390 U.S. 1014, *and cert. denied*, 390 U.S. 1015 (1968) ..... *passim*

Mississippi River Fuel Corp. v. Fontenot, 234 F.2d 898 (5th Cir.), *cert. denied*, 352 U.S. 916 (1956) 27

Morse v. Johnson, 282 A.2d 597 (Me. 1971) 21

Mouton v. Sinclair Oil and Gas Co., 410 F.2d 717 (5th Cir. 1969), *cert. denied*, 398 U.S. 957 (1970) ... 5, 9, 19, 27

MRT Exploration Co. v. McNamara, 731 F.2d 260 (5th Cir. 1984) 6

Murphy Corp. v. Fontenot, 73 So.2d 180 (La. 1954), *cert. denied*, 348 U.S. 831 (1955) 27

Olson v. Department of Revenue, 726 P.2d 1162 (Mont. 1986) 21

Paul v. United States, 371 U.S. 245 (1963) 8, 26

Rountree v. City & County of Denver, 596 P.2d 739 (Colo. 1979) 21

Shell Oil Co. v. Mouton, 410 F.2d 715 (5th Cir. 1969) 5, 9, 19, 27

Shell Oil Co. v. Secretary, Revenue and Taxation, No. 91-8635, Civil District Court, Orleans Parish, Louisiana 28

Surplus Trading Co. v. Cook, 281 U.S. 647 (1930) 7

Tarver v. Wilson, Civ. No. 90-0043 (W.D. La. May 22, 1990) 9, 14, 16, 19, 23, 24, 26, 27

TABLE OF AUTHORITIES – Continued

Page

United States v. City & County of Denver, 573 F. Supp. 686 (D. Colo. 1983) 20, 21

United States v. Lewisburg Area Sch. Dist., 539 F.2d 301 (3d Cir. 1976) 8, 20, 21

OTHER REFERENCES

S. Rep. No. 1625, 76th Cong., 3d Sess. 3, 5 (1940) 20

The Federal Coal Leasing Amendments Act of 1975, H.R. Rep. No. 681, 94th Cong., 2d Sess. 21 (1975), *reprinted in* 1976 U.S.C.C.A.N. 1943, 1957 11

The Federalist No. 43 (James Madison)..... 17

No. 95-___

In The

Supreme Court of the United States

October Term, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,

Petitioners,

v.

SECRETARY, LOUISIANA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition For A Writ Of Certiorari To The Court Of Appeal, First Circuit, State Of Louisiana

PETITION FOR A WRIT OF CERTIORARI

Mississippi River Transmission Corporation, Murphy Exploration and Production Company, Pennzoil Exploration and Production Company, TOTAL MINATOME CORPORATION, NorAm Energy Corp. and Rosewood Resources, Inc. (herein "Petitioners") respectfully pray that a Writ of Certiorari issue to review the decision of the Louisiana Court of Appeal, First Circuit (writ denied by the Supreme Court of Louisiana), entered in this case affirming the judgment of the 19th Judicial District Court of Louisiana in and for the Parish of East Baton Rouge.

OPINIONS BELOW

The opinion of the Louisiana Court of Appeal, First Circuit, is reported at *MRT Exploration Company v. McNamara*, 648 So.2d 1108 (Appendix A, p. 1a), and the denial by the Louisiana Supreme Court of Petitioners' application for a writ of certiorari is reported at *MRT Exploration Company v. McNamara*, 654 So.2d 1083 (Appendix B, p. 17a). The Louisiana district court's opinions are attached as Appendix C (its Written Reasons for Judgment, p. 19a) and Appendix D (its Supplemental Written Reasons for Judgment, p. 26a), and its Judgment is attached as Appendix E (p. 28a).

JURISDICTION

The Louisiana Court of Appeal, First Circuit, issued its opinion on December 29, 1994 (Appendix A, p. 1a). On May 19, 1995, the Louisiana Supreme Court denied Petitioners' application for a writ of certiorari that raised the question presented to this Court (Appendix B, p. 17a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Constitutional Provisions

United States Constitution, Article I, Section 8, Clause 17 provides:

> The Congress shall have power [t]o exercise exclusive Legislation in All Cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the

Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings.

United States Constitution Article VI, Clause 2 provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Constitution of the State of Louisiana of 1921, Article X, Sections 1 and 21.

Constitution of the State of Louisiana of 1974, Article VII, Section 4.

Federal Statutory Provisions

Buck Act, Pub. L. No. 819, 54 Stat. 1059 (1940) (codified as amended at 4 U.S.C. §§ 105-110)

Mineral Leasing Act for Acquired Lands, Pub. L. No. 382, 61 Stat. 907 (1947) (codified as amended at 30 U.S.C. §§ 351-359)

Federal Coal Leasing Amendments Act of 1975, Pub. L. No. 94-377, 90 Stat. 1083 (1976)

Louisiana Statutory Provisions

Louisiana Revised Statutes, Title 47, §§ 31, 631, 632, 633(7)(a), 633(8) and 633(9).

1892 La. Acts No. 12.

(The full text of the above referenced pertinent statutory provisions is set forth in Appendix G, p. 54a, *et seq.*)

STATEMENT OF THE CASE

In this case the State of Louisiana seeks to revisit, in slightly altered guise, the issues decided against it in *Humble Pipe Line Co. v. Waggonner*, 376 U.S. 369 (1964) and *Mississippi River Fuel Corp. v. Cocreham*, 382 F.2d 929 (5th

Cir. 1967), *reh'g denied*, 390 F.2d 34 (5th Cir.), *and cert. denied*, 390 U.S. 1014, *and cert. denied*, 390 U.S. 1015 (1968). In *Humble*, Louisiana had assessed ad valorem taxes on oil drilling equipment and pipelines owned, used, and kept by lessees of the United States within the confines of Barksdale Air Force Base ("Barksdale"). This Court held that the entirety of Barksdale is a federal enclave subject to the exclusive jurisdiction of the United States pursuant to Article I, Section 8, Clause 17 of the United States Constitution and thus is beyond the reach of the State's power to tax. Subsequently, the Fifth Circuit in *Cocreham*, applying *Humble*, held that Louisiana lacks power to impose severance taxes on oil and gas extracted from Barksdale. Here, Louisiana once again seeks to impose its severance tax upon Barksdale production, arguing that minor amendments to two statutes (one state and one federal) served implicitly to confer the taxing power that it previously lacked. The Louisiana courts below agreed, holding that although Barksdale undeniably remains a federal enclave, the state now is free to assert its taxing power without apparent restriction.

A. Factual Background[1]

In 1930, the City of Shreveport, the State of Louisiana and the Bossier Levee District ceded approximately 22,000 acres of land comprising Barksdale Air Force Base to the United States for a military post, flying field and bombing range. At the time of conveyance of Barksdale to the United States, Louisiana law provided that the United States "shall have the right of exclusive jurisdiction over the property . . . for all purposes, except the administration of the criminal laws . . . and the service of civil process." *Humble*, 376 U.S. at 371; *see* 1892 La. Acts No. 12 ("the Louisiana cession statute") (Appendix G, p. 65a).

---

[1] Petitioners and the State stipulated to the facts in the Louisiana district court. (Appendix A, p. 2a).

The Louisiana cession statute specifically provided that any land ceded to the United States would be "exempt from all State, parochial, municipal or other taxation." 1892 La. Acts No. 12 (Appendix G, p. 65a).

Petitioners are successors in interest to protective oil and gas leases granted by the United States in 1951 and 1961 pursuant to Public Land Order Nos. 701 and 2178 covering parcels of land within Barksdale known as Parcel 1, Parcel 3, Parcel 4 and the Miss Murphy Parcel. After the 1968 *Cocreham* decision and until September 1982, the Louisiana Department of Revenue and Taxation recognized that the provisions of Article I, Section 8, Clause 17 of the Constitution of the United States, the decision of this Court in *Humble*, and the repeated decisions of the United States Court of Appeals for the Fifth Circuit,[2] prohibited the State of Louisiana from levying its severance tax upon oil and gas severed from lands within the confines of Barksdale. However, by letter dated September 30, 1982, the Department reversed its position and advised the Petitioners with interests in the Parcel 3 and Miss Murphy tracts that, in its opinion, Louisiana severance tax was due on oil and gas produced from federal lands, less the royalty interest of the United States. The State apparently changed its position in reliance on a 1973 amendment to the severance tax statute which changed the method of calculation of the amount of the tax on oil (but not gas) from quantity based to value based and a 1976 amendment to the Mineral Leasing Act for Acquired Lands of 1947.[3]

---

[2] *See Mississippi River Fuel Corp. v. Cocreham*, 382 F.2d 929 (5th Cir. 1967), *reh'g denied*, 390 F.2d 34 (5th Cir.), *and cert. denied*, 390 U.S. 1014, *and cert. denied*, 390 U.S. 1015 (1968); *Shell Oil Co. v. Mouton*, 410 F.2d 715 (5th Cir. 1969); *Mouton v. Sinclair Oil and Gas Co.*, 410 F.2d 717 (5th Cir. 1969), *cert. denied*, 398 U.S. 957 (1970).

[3] The State also initially relied upon *Commonwealth Edison Co. v. Montana*, 453 U.S. 609 (1981); however, that case did not

Petitioners timely paid the State of Louisiana, under protest, the amount of severance tax claimed due for the production severed from lands covered by the Parcel 3 and the Miss Murphy leases. On December 29, 1982, Petitioners with interests in those tracts brought suit (Trial Court Docket No. 262,958) in the 19th Judicial District Court of Louisiana for recovery of the amounts paid under protest.[4] In 1987, the State proposed a severance tax assessment against Petitioner Rosewood on production from Parcel 1 and Parcel 4. On October 15, 1987, Rosewood paid the State, under protest, the entire amount of the State's proposed assessment and thereafter timely filed its proceedings (Trial Court Docket No. 323,597) for recovery of the amounts paid under protest. The Louisiana district court consolidated the two lawsuits for a decision on the briefs and the joint stipulation of facts. (Appendix C, p. 20a). All severance taxes purportedly due with respect to production from such parcels subsequent to the referenced payments have been paid under protest and, pursuant to Louisiana law, are to be disbursed upon a final decision herein.

---

involve leases granted on a federal enclave and, therefore, is not pertinent.

[4] Petitioners in Trial Court Docket No. 262,958 also filed suit in United States District Court for the Western District of Louisiana seeking a declaratory judgment that under the "exclusive jurisdiction" of federal enclaves established pursuant to Article I, Section 8, Clause 17 of the United States Constitution, the decision of this Court in *Humble*, and the repeated decisions of the United States Court of Appeals for the Fifth Circuit, the State of Louisiana was prohibited from imposing its severance tax. In March 1983, the district court held that under the provisions of the Tax Injunction Act of 1937, 28 U.S.C. § 1341, it lacked jurisdiction to decide the federal question involved. The Fifth Circuit affirmed the district court's dismissal of the proceedings for lack of jurisdiction. *MRT Exploration Co. v. McNamara*, 731 F.2d 260 (5th Cir. 1984).

B. Legal Background

The United States Constitution grants the federal government exclusive legislative jurisdiction over federal enclaves. *See* U.S. Const. art. I, § 8, cl. 17 (giving Congress the power "[t]o exercise exclusive Legislation in all Cases whatsoever . . . over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings").[5]

This Court has specifically held that Barksdale Air Force Base is a federal enclave subject to the exclusive legislative jurisdiction of the United States. *Humble*, 376 U.S. at 373. By virtue of its cession and the provisions of the Louisiana cession statute, Louisiana reserved to itself only the rights to enforce its criminal laws and to serve process on persons within Barksdale. The Louisiana cession statute expressly provided that property ceded to the United States was exempt from all state and local power of taxation. (Appendix G, p. 65a).

Despite a property's status as a federal enclave, a state may nevertheless exercise jurisdiction in areas that (i) it expressly reserved at the time the United States acquired the land; or (ii) the United States, via an act of Congress, has specifically retroceded jurisdiction back to

---

[5] As this Court has unequivocally held:

> The question is not an open one. It long has been settled that where lands for such a purpose are purchased by the United States with the consent of the state legislature, the jurisdiction theretofore residing in the state passes, in virtue of the constitutional provision, to the United States, thereby making the jurisdiction of the latter the sole jurisdiction.

Surplus Trading Co. v. Cook, 281 U.S. 647, 652 (1930).

the state.[6] In the Louisiana cession statute, Louisiana did not reserve the power to tax; rather it explicitly relinquished it.[7] Thus, only the second means of exercising state legislative jurisdiction to tax property within a federal enclave – specific retrocession by Congress – is potentially available to the State in this case. *Humble*, 376 U.S. at 374. The Louisiana Court of Appeal relied on one such congressional retrocession of jurisdiction, the Buck Act, 4 U.S.C. § 105 *et seq.*, which allows state imposition

---

[6] *See James v. Dravo Contracting Co.*, 302 U.S. 134, 147-48 (1937) (holding that a state may qualify its cession of jurisdiction by reservations not inconsistent with the use of the property by the United States); *United States v. Lewisburg Area Sch. Dist.*, 539 F.2d 301, 307 (3d Cir. 1976) ("Where there is a purchase by the United States for an art. I § 8 cl. 17 purpose and a cession by the state of exclusive jurisdiction, this jurisdiction can still be qualified either by the state, at the time when the land is purchased and the jurisdiction ceded, or by consent of the United States to the exercise of certain state laws within the enclave."); *Paul v. United States*, 371 U.S. 245, 263 (1963) ("The cases make clear that the grant of 'exclusive' legislative power to Congress over enclaves that meet the requirements of art. I, § 8, cl. 17, by its own weight, bars state regulation without specific congressional action."); *Lord v. Local Union No. 2088, Int'l Brotherhood of Elec. Workers*, 646 F.2d 1057, 1062-63 (5th Cir. Unit B) ("Congress is not in the habit of ceding jurisdiction by implication."), *reh'g denied*, 654 F.2d 723 (5th Cir. 1981), *and cert. denied*, 458 U.S. 1106 (1982); *see also Hancock v. Train*, 426 U.S. 167, 179 (1976) ("Because of the fundamental importance of the principles shielding federal installations and activities from regulation by the States, an authorization of state regulation is found only when and to the extent that there is 'a clear congressional mandate,' 'specific congressional action' that makes this authorization of state regulation 'clear and unambiguous.' ") (footnotes omitted).

[7] 1892 La. Acts No. 12, as in effect at the time of cession of Barksdale to the United States, specifically provided that the ceded land would be "exempt from all State, parochial, municipal or other taxation." (Appendix G, p. 65a).

of "income taxes" within federal enclaves, as authority for its decision that the Louisiana severance tax on oil and gas severed from lands located within the Barksdale enclave constituted an "income tax" under the Act.

In *Humble*, this Court concluded that an ad valorem tax on the value of equipment and property sought to be imposed by Louisiana within the confines of Barksdale did not constitute an income tax under the Buck Act. 376 U.S. at 374. Accordingly, it held Louisiana's attempt to levy the ad valorem tax within the enclave violated the exclusive legislative jurisdiction of the United States. The Fifth Circuit has repeatedly held that the Buck Act does not allow a different result for Louisiana's severance tax on oil and gas production. In *Cocreham*, the Fifth Circuit held that the State lacked the power to impose the same severance tax involved in this suit upon oil and gas extracted from one of the **same** leases involved in this suit. 382 F.2d at 938. Rejecting the State's very argument here that Congress had retroceded any power to impose severance taxes in the Buck Act, the Fifth Circuit held that "the Louisiana severance tax is simply not an income tax" under the Buck Act. *Id.* at 940.

The Fifth Circuit has reaffirmed this holding in two subsequent decisions. *See Shell Oil Co. v. Mouton*, 410 F.2d 715, 716 (5th Cir. 1969); *Mouton v. Sinclair Oil and Gas Co.*, 410 F.2d 717, 718 (5th Cir. 1969). As recently as 1990, in a case where the Louisiana Department of Revenue was the moving party, the United States District Court for the Western District of Louisiana applied the *Cocreham* holding to prohibit the State from imposing the severance tax on minerals extracted pursuant to a Barksdale lease on Parcel 2, a tract contiguous to three of the tracts at issue here. *Tarver v. Wilson*, Civ. No. 90-0043 (W.D. La. May 22, 1990) (Appendix F, p. 33a).

In 1973, subsequent to this Court's decision in *Humble* and the Fifth Circuit's decision in *Cocreham*, but prior to the federal court's decision in *Tarver*, the Louisiana Legislature amended the Louisiana severance tax on oil.

While that 1973 legislation modified the procedure for the determination of the amount of severance tax due with respect to oil and condensate (but not for natural gas) from an amount calculated at a rate of so many cents per barrel of production (a volume based calculation) to a percentage of the value of the oil produced (a value based calculation), the incidence of taxation, the severance of minerals from the soil, did not change.

The Louisiana severance tax, including the 1973 amendment, was enacted by the Louisiana Legislature pursuant to the grant of authority established in Article X, Section 21 of the Louisiana Constitution of 1921[8] authorizing the imposition of severance taxes on minerals severed from the soil within the State. That constitutional grant of authority to levy a severance tax upon minerals severed is distinct and separate from the provision in Article X, Section 1 of the Louisiana Constitution of 1921[9] authorizing the legislature to impose income taxes.

The other statute relied upon by the Louisiana courts below is the Mineral Leasing Act for Acquired Lands ("MLAAL"), 30 U.S.C. §§ 351-59 (Appendix G, p. 54a), and the 1976 amendments to that Act (Appendix G, p. 56a). Congress enacted the MLAAL in 1947 to promote and encourage mineral development on the acquired lands of the United States. The MLAAL parallels the Mineral Leasing Act of 1920, which regulates government leases on federal lands which are not "acquired" lands.

As enacted in 1947, the MLAAL was expressly not applicable to mineral leases granted by the United States for certain enclaves, including "such deposits in such

---

[8] Article X, Section 21 of the Louisiana Constitution of 1921 is identical in all pertinent aspects to Article VII, Section 4(B) of the Louisiana Constitution of 1974.

[9] The portion of Article X, Section 1 of the Louisiana Constitution of 1921 entitled "Income taxes" is identical in all pertinent aspects to Article VII, Section 4(A) of the Louisiana Constitution of 1974.

acquired lands as are . . . set apart for military or naval purposes." MLAAL, § 3; 30 U.S.C. § 352 (Appendix G, p. 54a. In 1976, however, many years after the leases involved in this case were granted under authority other than the MLAAL (the leases at issue were granted pursuant to Public Land Orders No. 701 and 2178), Congress amended Section 3 of the MLAAL to eliminate the military exclusion.[10] (Appendix G, p. 56a). Thus, after the 1976 amendment, certain military lands could be leased pursuant to the terms and provisions of the MLAAL.

---

[10] The amendment was part of the Federal Coal Leasing Amendments Act of 1975, Pub. L. No. 94-377, 90 Stat. 1083 (1976), and was enacted to ensure that the uniform rules and regulations of the MLAAL would govern the development of coal and lignite mined from Camp Swift in Austin, Texas, a federal enclave set apart for military purposes, provided those lands were leased to a governmental entity which produces electrical energy for sale to the public and such governmental entity is located in the state in which the lands are located. Specifically, the legislative history with respect to the Coal Leasing Act provides:

> Present law does not permit the Secretary to lease the minerals underlying acquired military property, thus precluding the development of significant reserves known to exist under Camp Swift in Texas. These reserves are desired for electrical power generation by the city of Austin, Texas. Section 12 of the 1975 amendments would amend the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) to permit leasing to a government entity of coal or lignite under acquired lands, provided the Secretary of Defense concurs.

Federal Coal Leasing Amendments Act of 1975, H.R. Rep. No. 681, 94th Cong., 2nd Sess. 21 (1975), *reprinted in* 1976 U.S.C.C.A.N. 1943, 1957.

C. Prior Proceedings In This Case

On January 18, 1990, the Louisiana state district court issued its written reasons for judgment in which it upheld the validity of the severance tax as applied to oil and gas severed from lands within Barksdale. (Appendix C, p. 25a). The state district court issued its final judgment based on these reasons on September 15, 1993, dismissing Petitioners' suit. (Appendix E, pp. 29-31a).

The Louisiana district court concluded that imposition of the severance tax on oil and gas produced from the lands within Barksdale did not conflict with the United States Constitution. (Appendix C, p. 25a). The court properly observed that Barksdale is a federal enclave, subject to the exclusive legislative jurisdiction of the United States. (*Id.* at 22a). The court nonetheless held that Louisiana had the right to impose its severance tax on minerals extracted from the lands within Barksdale because the tax met the definition of an "income tax" under the Buck Act, as to which "income tax" the United States had retroceded taxation power to the State. 4 U.S.C. §§ 106, 110(c) (Appendix G, p. 56a-57a).

The district court recognized the Fifth Circuit *Cocreham* opinion by Judge Wisdom, which held that the State's attempt to impose the same severance tax upon minerals severed pursuant to the very same mineral lease currently at issue was **not** an income tax under the Buck Act, and, therefore, the state was prohibited from legislating in this regard. *Cocreham*, 382 F.2d at 939-40. In doing so, the Louisiana court even acknowledged that the *Cocreham* court had followed this Court's opinion in *Humble*, which involved ad valorem taxes on the value of personal property of the lessee of the United States located within Barksdale. *Id.* at 938 ("While there are differences between the taxes involved, we think that *Humble* did not rest on the peculiar attributes of the ad valorem tax. It rested instead on the general principle that a state lacks authority to levy any tax in an area under the exclusive jurisdiction of the United States.").

However, the state district court relied on its interpretation of the 1973 amendment to the severance tax statute as its basis for adopting the State's assertion that *Cocreham* no longer controlled. The district court held that by that amendment, Louisiana had changed its severance tax into an income tax qualifying under the Buck Act. The district court ignored in its analysis both the fact that Louisiana had not similarly changed the severance tax on gas and the fact that legislation establishing the severance tax and the 1973 amendments to the severance tax on oil had been enacted pursuant to the provisions of the Louisiana Constitution authorizing imposition of severance taxes, not the provisions authorizing the imposition of income taxes.

The state district court also concluded that the state had the right to impose a severance tax on the minerals pursuant to the MLAAL, as amended in 1976. (Appendix C, p. 23a). The Louisiana court stated that although initially the MLAAL did not specifically apply to lands like Barksdale set aside for military purposes, the 1976 amendment's removal of this exclusion brought these Barksdale leases, which were granted in 1951 and 1961 subject to Pubic Land Orders Nos. 701 and 2178 (not under the authority of the MLAAL), under the MLAAL. The court apparently embraced the State's argument that Section 8 of the MLAAL, providing that nothing in the Act shall be construed to affect the right of states to exercise "any right which they may have with respect to properties covered by leases issued under this Act," constituted an implicit retrocession to the states of the right to tax minerals extracted from beneath federal enclaves. (Appendix C, p. 24a).

The Louisiana Court of Appeal affirmed the district court's judgment, agreeing with the lower court that the amendment to the Louisiana severance tax brought it within the definition of an "income tax" under the Buck Act and was therefore valid. (Appendix A, p. 10a). The

court rejected Petitioners' contention that the Fifth Circuit's decision in *Cocreham* was dispositive, adopting without further analysis the lower court's opinion that by amending the severance tax to change the basis for calculating the amount of severance tax due on oil and condensate to a percentage of the value of the oil and condensate produced, the Louisiana Legislature had transformed the severance tax into an "income tax" for purposes of the Buck Act. The Louisiana Court of Appeal expressly recognized, however, that the basis for calculating the amount of the severance tax on gas remained based upon the number of cubic feet of gas produced – not the value thereof. The Louisiana Court of Appeal also affirmed the state district court's holding that the MLAAL applied to these leases and that the 1976 amendment to the MLAAL "strengthened" the State's right to impose severance taxes on the oil and gas. (Appendix A, p. 13a). Neither the district court nor the Court of Appeal gave any effect, however, to the federal district court's opinion in *Tarver*.

In a per curiam opinion, the Louisiana Supreme Court denied Petitioners' application for a writ of certiorari on the issue presented to this Court, that is, whether the severance taxes sought to be imposed on oil and gas extracted from lands lying within the confines of Barksdale Air Force Base, a federal enclave, violate Article I, Section 8, Clause 17 of the United States Constitution. (Appendix B, p. 18a).[11]

---

[11] The Louisiana Supreme Court denied Petitioners' application for a writ of certiorari on the issue presented to this Court, (Appendix B, p. 18a), however it reversed and remanded, per curiam, on the state's reconventional demand (i.e., counterclaim) as to whether Louisiana state law permitted the state to impose severance taxes for the 1979-82 period in light of the Louisiana Court of Appeal's opinion upholding the imposition of the tax.

D. Presentation Of Federal Question To Lower Courts

As reflected in the foregoing and the opinions of the Louisiana courts, the Louisiana trial court and Louisiana Court of Appeal each acknowledged the presentation of the constitutional issue founded upon Article I, Section 8, Clause 17 of the United States Constitution and its Supremacy Clause (Appendix A, p. 5a; Appendix C, p. 20a), as well as the ancillary federal questions involving the interpretation of the Buck Act (Appendix A, p. 8a; Appendix C, p. 22a), and the MLAAL, as amended (Appendix A, p. 11a; Appendix C, p. 23a).

REASONS FOR GRANTING THE PETITION

Article I, Section 8, Clause 17 of the United States Constitution embodies the Framers' understanding that a federal military enclave "should be exempt from the authority of the particular State." The Federalist No. 43 (James Madison). Whether states have legislative jurisdiction to impose severance and other similar taxes in such federal enclaves is a matter of substantial constitutional and practical importance. This Court appeared to have resolved that question in *Humble*, but the decision below ignores *Humble* and has reopened the question once again. Review should be granted in order to lay to rest the doubts the Louisiana courts' decisions raise concerning the continuing vitality of *Humble* and, additionally, to bring Louisiana into conformity with federal law.

The ruling below also directly conflicts with decisions of the Fifth Circuit and the United States District Court for the Western District of Louisiana. Under the ruling, Petitioners must pay a form of state tax that those federal courts have held to be invalid as a matter of federal constitutional law.

The principal holding below – that the Louisiana severance tax constitutes an "income tax" which the state may impose pursuant to the Buck Act – is contrary to

both *Humble* and *Cocreham*, as well as the recent decision of the federal district court in *Tarver*. In *Humble*, this Court broadly held that the United States has exclusive jurisdiction over Barksdale pursuant to Article I, Section 8, Clause 17 of the Constitution, and consequently, that "Louisiana is without jurisdiction to levy an ad valorem tax on privately owned property situated in the tract." 376 U.S. at 370. The Fifth Circuit in *Cocreham* correctly understood this to mean that Louisiana is precluded from "levying and collecting a tax on oil and gas severed from the land by a third party under a lease from the United States." 382 F.2d at 931. In so holding, the court explicitly rejected the State's argument that the Louisiana severance tax was really an income tax which the State was entitled to impose under the Buck Act. *Id.* at 940. Louisiana subsequently amended its severance tax so that the amount of the tax on oil (but not gas) is measured by value rather than quantity, but this merely confirmed the essential similarity between the Louisiana severance tax and the ad valorem tax at issue in *Humble*. Each tax is measured by the **value** of the item subject to tax and, as the Fifth Circuit stated in *Cocreham*, "the Louisiana severance tax is simply not an income tax." *Id.*

The secondary holding below – that a 1976 amendment to the Mineral Leasing Act for Acquired Lands empowers Louisiana to impose severance taxes with respect to the extraction of oil and gas from Barksdale – is also in direct conflict with the decision of the district court in *Tarver v. Wilson*, Civ. No. 90-0043 (W.D. La. May 22, 1990). These conflicting decisions create inconsistent state and federal rules for precisely the same federal enclave. Louisiana could have taken an appeal to the Fifth Circuit from the adverse decision in *Tarver*, but it deliberately chose not to do so and presumably will not do so in any other similar cases.

Preserving the exclusive jurisdiction of the United States over federal enclaves and keeping their affairs free of impermissible state intrusion is of vital importance to the country, as the Framers concluded in drafting Article I, Section 8, Clause 17 of the United States Constitution. To balance the competing need for the establishment of federal enclaves and to protect their functions from unauthorized state interference with the need to allow the states the ability to preserve their private rights, the Framers required a state's concurrence in the establishment of enclaves and allowed the states to condition their cession of jurisdiction with any stipulation they chose.[12]

The need for exclusive federal legislative jurisdiction retains validity and vitality, especially in the area of state taxation. This Court has steadfastly maintained that absent (i) a reservation by the state of a right to tax in the cession of land and jurisdiction to the federal government, or (ii) a specific retrocession of jurisdiction in an act of Congress, a state lacks power to tax property within an area of exclusive federal jurisdiction. *See, e.g., Humble*, 376 U.S. at 374; *James v. Dravo Contracting Co.*, 302 U.S. 134, 148-49 (1937). It is undisputed in this case that Louisiana's cession in 1930 of the property that became Barksdale Air Force Base expressly ceded the State's authority to tax. Thus, only a

---

[12] As Madison explained:

> The necessity of a like authority [to that over seats of government] over forts, magazines, etc., established by the general government, is not less evident. The public money expended on such places, and the public property deposited in them, requires that they should be exempt from the authority of the particular State. Nor would it be proper for the places on which the security of the entire Union may depend, to be in any degree dependent on a particular member of it. All objections and scruples are here also obviated, by requiring the concurrence of the States concerned, in every such establishment. . . .

The Federalist No. 43 (James Madison).

specific retrocession by Congress of the jurisdictional power to impose the taxes at issue could vest Louisiana with such authority. *See Humble*, 376 U.S. at 374 ("When Congress has wished to allow a State to exercise jurisdiction to levy certain taxes within a federal enclave it has specifically so stated. . . . "); *Mississippi River Fuel Corp. v. Cocreham*, 390 F.2d 34, 35 (5th Cir. 1968) ("Except with the consent of the United States, the State's taxing power cannot operate within the confines of a federal enclave.").

The Louisiana Court of Appeal's decision destabilizes a settled area of law, conflicts with Louisiana's cession statute, this Court's decisions, decisions of the United States Court of Appeals for the Fifth Circuit and other federal court decisions, and sanctions a significant state intrusion into an area of exclusive federal jurisdiction, in contravention of the United States Constitution.

I THE DECISION OF THE LOUISIANA COURT CONFLICTS WITH THE DECISION OF THIS COURT IN *HUMBLE*, DECISIONS OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT AND FEDERAL DISTRICT COURT DECISIONS.

A. The Louisiana Court Of Appeal Erred In Deciding That The Louisiana Severance Tax Was An Income Tax Under The Buck Act.

Under the terms of the Louisiana cession statute (1892 La. Acts No. 12), which was applicable to the 1930 cession of the Barksdale enclave, and the limited retrocession by Congress in the Buck Act, the severance tax here in issue could only be assessed if it constitutes an "income tax," as that term is defined under the Buck Act. Recognizing that this was the only avenue by which it could validate Louisiana's assessment, the Louisiana Court of Appeal concluded that the Louisiana severance

tax was an "income tax" for purposes of the Buck Act. (Appendix A, p. 10a). The court's holding contravenes this Court's decision in *Humble* and unequivocally conflicts with three decisions of the Fifth Circuit, including *Cocreham*, as well as the decision of the United States District Court for the Western District of Louisiana in *Tarver*.[13]

In *Cocreham*, the Fifth Circuit held that the Louisiana severance tax, as applied to production from properties subject to **one of the very same leases** at issue here, did **not** meet the definition of an income tax under the Buck Act, stating that "[w]e are not free to expand the technical and precise language that Congress has used." 382 F.2d at 940. The Fifth Circuit steadfastly adhered to this position in two subsequent cases involving the same issue. *Shell Oil*, 410 F.2d at 716; *Sinclair Oil and Gas*, 410 F.2d at 718. Indeed, the Fifth Circuit rebuked the State for attempting to revisit issues of which the court had already "clearly and concisely disposed": "[T]he Collector seeks in effect to relitigate this question of law which we have already settled on the identical question of law, involving the identical federal military establishment." *Shell Oil*, 410 F.2d at 716-17.

Although acknowledging the direct relevance of *Cocreham* and its progeny, the Louisiana Court of Appeal here nevertheless dismissed this line of federal appellate authority in affirming the Louisiana district court. (Appendix A, p. 5a-7a). It concluded that it was not bound by *Cocreham* because a 1973 amendment to the Louisiana severance tax on oil (but not gas) changed the method of calculation of the amount of the tax thereby

---

[13] *See Mississippi River Fuel Corp. v. Cocreham*, 382 F.2d 929 (5th Cir. 1967), *reh'g denied*, 390 F.2d 34 (5th Cir.), *and cert. denied*, 390 U.S. 1014, *and cert. denied*, 390 U.S. 1015 (1968); *Shell Oil Co. v. Mouton*, 410 F.2d 715 (5th Cir. 1969); *Mouton v. Sinclair Oil and Gas Co.*, 410 F.2d 717 (5th Cir. 1969); *Tarver v. Wilson*, Civ. No. 90-0043 (W.D. La. May 22, 1990) (Appendix F, p. 33a).

making, in the Court of Appeal's opinion, the severance tax an income tax under the Buck Act. (Appendix A, p. 10a). The amendment to the Louisiana severance tax, however, does not serve to distinguish *Cocreham* because the fundamental nature of the severance tax did not change for purposes of its characterization under the Buck Act; the incidence of taxation, the severance of the minerals, remained precisely the same.

Congress enacted the Buck Act in 1940 to allow the states to assess income taxes on private persons residing in federal enclaves or receiving income from transactions occurring or services performed in such areas. *See* S. Rep. No. 1625, 76th Cong., 3d Sess. 3, 5 (1940); *Humble*, 376 U.S. at 374; *Cocreham*, 382 F.2d at 939-40. The Act defines "income tax" as "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts." 4 U.S.C. § 110(c) (Appendix G, p. 57a). Whether a particular state tax meets the definition of an income tax under the Buck Act is a question of federal law. *Howard v. Commissioners of Sinking Fund of Louisville*, 344 U.S. 624, 628-29 (1953); *United States v. Lewisburg Area Sch. Dist.*, 539 F.2d 301, 310 (3d Cir. 1976). The legislative history of the Buck Act indicates that the term "income tax" encompasses state taxes which are plainly assessed on **income**, even though not denominated "income taxes" by the state. S. Rep. No. 1625, 76th Cong., 3d Sess. 5 (1940) (noting committee's intent to "include therein any State tax (whether known as a corporate-franchise tax, or business-privilege tax, or by any other name) if it is levied on, with respect to, or measured by, net income, gross income, or gross receipts"); *United States v. City & County of Denver*, 573 F. Supp. 686, 691 (D. Colo. 1983) ("[I]t seems apparent that the variations contemplated by the Congress were variations in the name or the **form** of the State tax, but not variations in the **substance** of the tax.") (emphasis supplied).

The "income tax" exception to exclusive federal jurisdiction granted by the Buck Act applies to individuals,

not to property, as demonstrated by its text and the fact that Congress enacted it to equalize income tax liability among federal employees residing on and off federal enclaves. *See United States v. Lewisburg Area Sch. Dist.*, 539 F.2d 301, 309 (3d Cir. 1976); *see also United States v. City & County of Denver*, 573 F. Supp. 686, 691 (D. Colo. 1983) ("The historical context in which the Buck Act was enacted indicates that Congress was legislating with respect to taxes on salaries, wages, commissions and other forms of income.").

The great majority of cases determining that a state tax meets the Buck Act definition of an income tax involve taxes levied on taxpayers, on their salaries, or on their wages, but not on their property.[14] By comparison, even after the 1973 amendment, the Louisiana severance tax is still **not** "levied on, with respect to, or measured by, net income, gross income, or gross receipts." 4 U.S.C.

---

[14] *See, e.g., Howard v. Commissioners of Sinking Fund of Louisville*, 344 U.S. 624, 627-28 (1953) (occupational tax or license fee found to be tax upon individual's earnings); *United States v. Lewisburg Area Sch. Dist.*, 539 F.2d 301, 304 (3d Cir. 1976) (occupation tax imposed on individuals); *Jefferson County v. Acker*, 850 F. Supp. 1536, 1537 (N.D. Ala. 1994) ("privilege, license or occupational tax" imposed upon individuals in certain professions); *Rountree v. City & County of Denver*, 596 P.2d 739, 740 (Colo. 1979) (employment or occupation tax "on every natural person who performs sufficient services in Denver to be paid $250 per month by a 'salary, wage, commission or other compensation basis' "); *Morse v. Johnson*, 282 A.2d 597, 598 (Me. 1971) (traditional state individual income tax); *Olson v. Dep't of Revenue*, 726 P.2d 1162, 1164 (Mont. 1986) (withholding taxes from wages); *Burns v. State*, 439 P.2d 702, 703 (N.M.) (tax on wages), *cert. denied*, 393 U.S. 841 (1968); *Kiker v. City of Philadelphia*, 31 A.2d 289, 291 (Pa.) (tax on salaries, wages, commissions and other compensation), *cert. denied*, 320 U.S. 741 (1943); *City of Portsmouth v. Fred C. Gardner Co.*, 211 S.E.2d 259, 261 (Va. 1975) (city license tax upon contractors engaging in business in that city).

§ 110(c) (Appendix G, p. 57a). Rather, the amended Louisiana severance tax remains a tax on the mineral itself,[15] not on a private taxpayer, a factor specifically relied upon by the *Cocreham* court in deciding that the Louisiana severance tax was **not** an income tax under the Buck Act. *See Cocreham*, 382 F.2d at 940 ("Congress has authorized the states to impose an income tax **on private persons** in federal enclaves . . . .") (emphasis supplied). Although the Buck Act "income tax" determination is governed and controlled by federal law, it should still be noted that the Louisiana severance tax, and its amendment, were enacted pursuant to the provisions of the Louisiana constitution authorizing the imposition of severance taxes, a provision separate from the constitutional provisions authorizing the imposition of income taxes. Notably, Petitioners are liabile for and pay Louisiana income taxes, wholly separate and apart from these severance taxes, for income attributable to the sale of the production here at issue.

Thus, the Louisiana severance tax remains today a tax on property, the oil and gas severed from the land. As demonstrated by this Court's opinion in *Humble*, a tax on the **value** of property is not equivalent to a tax on **income** under the Buck Act. 376 U.S. at 374. In *Humble*, this Court expressly recognized the Buck Act as an exception to the United States' exclusive legislative jurisdiction in federal enclaves, but nevertheless struck down Louisiana's ad

---

[15] *See* La. Const. of 1921, art. X, § 21 (Appendix G, p. 57a-58a) ("Taxes may be levied on natural resources severed from the soil or water. . . . "), La. R.S. 47:631 ("Taxes as authorized by Section 21 of Article X of the Constitution of Louisiana, are hereby levied upon all natural resources severed from the soil or water, including . . . minerals such as oil, gas. . . . ") (Appendix G, p. 60a). The Louisiana statutes provide that any unpaid tax shall become a lien on the mineral, not the mineral owner, and follows the mineral. La. R.S. 47:632 (Appendix G, p. 60a).

valorem property tax, a tax on the **value** of the mineral lessee's equipment and improvements within the confines of Barksdale, as precluded by the terms of Louisiana's cession and the United States Constitution. *Id.* The Louisiana Court of Appeal's reasoning thus creates an irreconcilable conflict with a decision of this Court, a conflict made obvious by the decisions of the Fifth Circuit in *Cocreham* and its progeny.[16]

The Louisiana Court of Appeal's attempt to distinguish *Cocreham* is also directly contrary to *Tarver*, the federal district court opinion that postdates the amendment to the Louisiana severance tax statute and the 1976 amendment to the MLAAL, and which concerns leased land within Barksdale contiguous to the tracts at issue here. *Tarver* involved an attempt by the State of Louisiana to impose the severance tax on minerals extracted from Parcel 2, which is contiguous to Parcels 1 and 3 and the Miss Murphy parcel. Chief Judge Tom Stagg for the Western District of Louisiana specifically rejected the State's argument that changes in the method of calculation of the tax suddenly rendered the tax an "income tax" under the Buck Act. The federal district court stated that it "cannot believe that the change in the method for calculation of the amount of the tax on the oil severed from a quantity-based tax to a value-based tax alters the Fifth Circuit's conclusion that the tax is not an income tax." (Appendix F, p. 49a). The court observed that the amended tax continues to be levied on natural resources, not on individual taxpayers, and that the tax is not based upon

---

[16] The Fifth Circuit recognized that any differences between the ad valorem tax involved in *Humble* and the Louisiana severance tax were unimportant for purposes of its decision. *See Cocreham*, 382 F.2d at 938 ("Just as the state could not tax personal property located on Barksdale Field, it cannot impose a severance tax when the incidence of taxation, the severance of minerals from the soil, takes place on a federal enclave, outside the jurisdiction of the State of Louisiana.").

income at all. *Tarver* represents yet another federal authority with which the Louisiana Court of Appeal's opinion conflicts.

Finally, even though acknowledging the direct relevance of *Cocreham* and its progeny, the Louisiana Court of Appeal did not even attempt to reconcile its holding with the fact that the severance tax on natural gas produced from the Barksdale lands was not amended (as is significant to these proceedings) subsequent to *Cocreham*, and the amount of that tax continues to be calculated upon the volume of gas produced, rather than its value. By dismissing this problem on the alternative basis that "we find that the Louisiana Severance Tax may be imposed as a result of the 1976 amendment to the Mineral Leasing Act for Acquired Lands," (Appendix A, p. 11a) the court implicitly concedes that even under its reasoning the tax on natural gas is not an income tax under the Buck Act.

B. Congress Did Not Retrocede To Louisiana The Power To Levy Severance Taxes Within The Barksdale Enclave With Its 1976 Amendments To The MLAAL.

The 1976 amendment to the MLAAL did not retrocede to a state any power previously ceded by a state to the United States. Yet in this case, the Louisiana Court of Appeal accepted Louisiana's argument that the 1976 amendment to the MLAAL granted it the authority to levy the severance taxes here in issue. The State's argument, accepted by the Louisiana Court of Appeal, was that the savings clause in Section 8 of the MLAAL, which provides that nothing contained in the Act shall affect any right that a state may have to levy and collect taxes, constituted a congressional retrocession of authority to the states in 1947. Once Congress removed the exclusion of certain military and naval enclaves from the scope of the MLAAL in 1976, the State argued, it regained the power to levy severance taxes on oil and gas severed from land within the enclave. This argument was

accepted by the Louisiana Court of Appeal, affirming the Louisiana district court's finding that "[t]he power of the states to impose severance taxes on minerals extracted by lessees of the United States was strengthened by" the 1976 amendment to the MLAAL. (Appendix C, p. 24a). This finding directly conflicts with all applicable precedent.

This Court has specifically recognized congressional retrocession of power as a necessary step preceding any constitutional state intrusion into a federal enclave, in particular the Barksdale enclave. *Humble*, 376 U.S. at 374. The MLAAL does not, either as originally enacted or as amended, confer any legislative or enforcement power to any state within any federal enclave. Rather, in particular with respect to state taxation powers, the MLAAL is expressly and emphatically neutral:

> Nothing contained in the Act shall be construed to affect the rights of the State or other local authorities to exercise any right **which they may have** with respect to properties covered by leases issued under this Act, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

(MLAAL, § 8; 30 U.S.C. § 357; Appendix G, p. 55a, emphasis supplied). Thus, Section 8 of the MLAAL simply preserves to the states any existing right which they may have retained to tax the properties of a lessee of the United States in a federal enclave.

As this Court found in *Humble* in 1964, in ceding to the United States the property constituting Barksdale Air Force Base, Louisiana did not preserve **any** right to levy and collect taxes inside the enclave. 376 U.S. at 374. Rather, it specifically ceded any such power to the United States. The only power Louisiana now has to levy taxes on the Barksdale enclave is pursuant to the specific retrocession of power by Congress, as in the Buck Act, as recognized by this Court in *Humble*. Thus, the Louisiana

district court's conclusion that "the power of the states to impose severance taxes on minerals extracted by lessees of the United States was strengthened" by the 1976 amendment to the MLAAL was meritless. Louisiana had no such "power" to "strengthen" as to the Barksdale enclave because it had specifically and explicitly ceded all such power to the United States in 1930.

Moreover, no implicit retrocession can be imputed to the 1976 amendment to the MLAAL. Nothing on the face of the amendment indicates a specific intention to restore power previously and explicitly ceded by a state to the United States. The law is clear that any such retrocession of power to a state must be specific. As stated by this Court in *Paul v. United States*, 371 U.S. 245, 263 (1963), "[t]he cases make clear that the grant of 'exclusive' legislative power to Congress over enclaves . . . , by its own weight, bars state regulation without specific congressional action." *Accord Humble*, 376 U.S. at 374; *Lord v. Local Union No. 2088, Int'l Brotherhood of Electrical Workers*, 646 F.2d 1057, 1062-63 (5th Cir. Unit B,), *reh'g denied*, 654 F.2d 723 (5th Cir. 1981), *and cert. denied*, 458 U.S. 1106 (1982).

In concurring with the Louisiana district court's holding that the MLAAL, as amended, "strengthened" Louisiana's power to impose a severance tax, the Louisiana Court of Appeal again reached a result plainly inconsistent with this Court's decision in *Humble*, and diametrically opposed to Fifth Circuit decisions, including *Cocreham*, and the recent decision of the United States District Court for the Western District of Louisiana in *Tarver*. *Humble* unequivocally held that the Louisiana state and local governments were prohibited from imposing taxes upon the value of the properties of a lessee of the United States located upon the Barksdale federal enclave, absent a specific retrocession of taxation powers by the United States. The MLAAL cedes no such power. Rather, it merely provides that it does **not affect** any right a state may have. Thus, the 1976 amendments to the

MLAAL did not have the effect of legislatively overruling the holding of this Court in *Humble*.

II THE DECISION OF THE LOUISIANA COURT OF APPEAL UNSETTLES THE SETTLED LAW IN THE IMPORTANT AREA OF FEDERAL ENCLAVE JURISDICTION.

Prior to the opinion of the Louisiana Court of Appeal, the law as established by *Humble* was clear, incontrovertible, and recognized by all federal courts. What the Louisiana court has attempted to do is unsettle the law.

The attempts by the State of Louisiana to renege on its ceding of exclusive jurisdiction over the Barksdale Federal enclave have continued now for more than 40 years. From the issuance of this Court's opinion in *Humble* until this decision, those attempts have been uniformly rebuffed by all federal courts. As to the Barksdale severance taxes involved here, there have been no less than six such attempts, documented through decision of the Louisiana Supreme Court,[17] decisions of the United States Court of Appeals for the Fifth Circuit,[18] and through a recent final decision of the United States District Court for the Western District of Louisiana.[19] Indeed,

---

[17] *See Murphy Corp. v. Fontenot*, 73 So.2d 180 (La. 1954), *cert. denied*, 348 U.S. 831 (1955).

[18] *See Mississippi River Fuel Corp. v. Fontenot*, 234 F.2d 898 (5th Cir.), *cert. denied*, 352 U.S. 916 (1956); *Mississippi River Fuel Corp. v. Cocreham*, 382 F.2d 929 (5th Cir. 1967), *reh'g denied*, 390 F.2d 34 (5th Cir.), *and cert. denied*, 390 U.S. 1014, *and cert. denied*, 390 U.S. 1015 (1968); *Shell Oil Co. v. Mouton*, 410 F.2d 715 (5th Cir. 1969); *Mouton v. Sinclair Oil and Gas Co.*, 410 F.2d 717 (5th Cir. 1969), *cert. denied*, 398 U.S. 957 (1970).

[19] *See Tarver v. Wilson*, Civ. No. 90-0043 (W.D. La. May 22, 1990); Appendix F, p. 33a.

litigation over the severance taxation of Barksdale production continues even now.[20]

This Court obviously thought it had put the jurisdictional issues to rest in *Humble*, for its decision there was clear and unequivocal. As is apparent from the Louisiana Court of Appeal's opinion, however, it did not. This Court now confronts the anomalous situation where contiguous parcels subject to identical mineral leases from the United States in a federal enclave have been disparately treated: the production from four parcels having been held subject to Louisiana's taxing power by the Louisiana Court of Appeal here, and the production from another parcel, Parcel 2, having been held not subject to such taxation by a federal district court applying the Supremacy Clause of the United States Constitution, this Court's opinion in *Humble*, and consistent Fifth Circuit precedent.

Only this Court can rectify the situation. It should do so, reiterating its holding in *Humble* that the jurisdiction of the federal government in this enclave is primary, controlling and exclusive, and that Louisiana state severance taxes cannot be levied on production from lands within the Barksdale federal enclave. *See Humble*, 376 U.S. at 372-73.

---

[20] Litigation continues with respect to oil and gas severed from Parcels 1 and 4 within Barksdale as reflected by the decision entered on July 10, 1995 by the Civil District Court for the Parish of Orleans, State of Louisiana in those proceedings styled *Shell Oil Co. v. Secretary, Revenue and Taxation*, No. 91-8635, which decision is appealable to the Louisiana Fourth Circuit Court of Appeal, a circuit different from the circuit from which the decision complained of herein was decided.

CONCLUSION

Accordingly, this Court should issue a writ of certiorari to the Louisiana Court of Appeal, First Circuit, and reverse the judgment of that court and the Louisiana district court.

Respectfully submitted,

CHARLES M. DARLING, IV
KIRK K. VAN TINE
BAKER & BOTTS, L.L.P.
The Warner
1299 Pennsylvania Ave., NW
Washington, D.C. 20004
(202) 639-7700

CLAUDIA WILSON FROST
JANE NENNINGER BLAND
MACEY REASONER STOKES
BAKER & BOTTS, L.L.P.
910 Louisiana
Houston, TX 77002
(713) 229-1234

J. EDGERTON PIERSON, JR.
Counsel of Record
PIKE HALL, JR.
J. DAVID GARRETT
BLANCHARD, WALKER, O'QUIN & ROBERTS
(A Professional Law Corp.)
Post Office Drawer 1126
Shreveport, LA 71163
(318) 221-6858

KEITH A. JONES
BECK, REDDEN & SECREST
1331 Lamar Street
Houston, TX 77010
(713) 659-8140

Counsel for Petitioners

August 17, 1995

No. 95-___

In The

Supreme Court of the United States

October Term, 1995

MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY EXPLORATION AND PRODUCTION COMPANY, PENNZOIL EXPLORATION AND PRODUCTION COMPANY, TOTAL MINATOME CORPORATION, NORAM ENERGY CORP. AND ROSEWOOD RESOURCES, INC.,

Petitioners,

v.

SECRETARY, LOUSIANA DEPARTMENT OF REVENUE AND TAXATION,

Respondent.

On Petition For Writ Of Certiorari To The Court Of Appeal, First Circuit, State Of Louisiana

APPENDICES

APPENDICES

		Page
APPENDIX A	Opinion, Louisiana Court of Appeal, First Circuit (December 29, 1994), reported at 648 So.2d 1108	1a
APPENDIX B	Per Curiam Decision on Application for Writ of Certiorari, Supreme Court of Louisiana (May 19, 1995), reported at 654 So.2d 1083	17a
APPENDIX C	Written Reasons For Judgment, 19th Judicial District Court of Louisiana In and For the Parish of East Baton Rouge (January 18, 1990).....	19a
APPENDIX D	Supplemental Written Reasons For Judgment, 19th Judicial District Court of Louisiana In and For the Parish of East Baton Rouge (January 2i, 1990).....	26a
APPENDIX E	Judgment, 19th Judicial District Court of Louisiana In and For the Parish of East Baton Rouge (September 15, 1993).....	28a
APPENDIX F	Memorandum Opinion, United States District Court for the Western District of Louisiana (May, 1990 unpublished).....	33a
APPENDIX G	Constitutional and Statutory Provisions	54a
	Mineral Leasing Act for Acquired Lands §§ 3, 8 and 9	54a
	The Federal Coal Leasing Amendments Act of 1975 § 12	56a
	Buck Act § 2(a) and § 6(c).....	56a

APPENDICES – Continued

Page

Constitution of the State of Louisiana of 1921, Article X, §§ 1 and 21 ..... 57a

Constitution of the State of Louisiana of 1974, Article VII, § 4 ..... 58a

Louisiana Revised Statutes, Title 47:

§ 31 ..... 59a

§ 631 ..... 60a

§ 632 ..... 60a

§ 633(7)(a) [Prior to 1973 amendment] 61a

§ 633(7)(a) [Subsequent to 1973 amendment] 62a

§ 633(8) [Prior to 1973 amendment] 63a

§ 633(8) [Subsequent to 1973 amendment] 63a

§ 633(9) 64a

1892 La. Acts No. 12 ..... 65a

APPENDIX A

MRT Exploration Company, Mississippi River Transmission Corporation, Murphy Oil Corporation, Pennzoil Producing Company, Texas Gas Exploration Corporation and Arkla, Inc.

v.

Shirley McNamara, Secretary, Louisiana Department of Revenue and Taxation.

Rosewood Resources, Inc.

v.

Shirley McNamara, Secretary, Louisiana Department of Revenue and Taxation.

No. 94 CA 0063, 94 CA 0064.
Court of Appeal of Louisiana,
First Circuit.

Dec. 29, 1994.
Rehearing Denied Feb. 2, 1995.

Before LOTTINGER, C.J., and CARTER and PITCHER, JJ. PITCHER, Judge.

Plaintiffs[1] filed this action to recover severance taxes paid under protest for a period beginning in October of

---

[1] Suit Number 262,928 and Suit Number 323,597 were consolidated by the trial court. We will refer to the appellants from both suits collectively as "plaintiffs." Plaintiffs in Suit Number 262,928 (our docket number 94 CA 0063) are Arkla, Inc., Pennzoil Producing Company, Arkla Exploration Company, as successor to the interests of MRT Exploration Company and Mississippi River Transmission Corporation, Murphy Oil USA, Inc., and Total Minatome Corporation, as successor to the interests of Texas Gas Exploration Corporation by corporate merger. The plaintiff in Suit Number 323,597 (our docket number 94 CA 0064) is Rosewood Resources, Inc.

1982. Plaintiffs argued that the Louisiana Severance Tax Statutes were unconstitutional as applied to oil and gas production from the Barksdale Air Force Base, a federal enclave. In response, defendant, the Louisiana Department of Revenue and Taxation, filed a reconventional demand for severance taxes covering the period from December of 1979 through September of 1982.[2] The trial court dismissed plaintiffs' claims, holding that the Louisiana Severance Tax Statutes were valid and enforceable. The trial court also granted judgment in favor of defendant on its reconventional demand. We affirm.

FACTS

The facts of these two consolidated cases were adduced by written stipulation and excellently summarized in the trial court's written reasons for judgment. We will adopt those reasons as our own. They are as follows:

> The State of Louisiana, the City of Shreveport and the Bossier Levee District conveyed 22,000 acres located in Bossier Parish to the United States in 1930 for the construction of Barksdale Air Force Base. The Bureau of Land Management leased the mineral rights in the portion of the base known as the "Parcel 3 Lands" to Union Producing Company in 1961. Arkla, Inc., Arkla Exploration Company, Pennzoil Producing Company, Total Minatome Corporation and Murphy Oil USA, Inc. are the successors of Union Producing Company's rights. The Bureau leased rights in the property

---

[2] The reconventional demand was filed in Suit Number 262,928 only.

known as the "Miss Murphy USA Lease" to W.R. Stephens and Natural Gas and Oil Corporation. Arkla Exploration Co. and Murphy Oil USA, Inc., are the successors of the leasehold rights of W.R. Stephens and Natural Gas and Oil Corporation. These seven lessees are the plaintiffs in Suit Number 262,928.

The Bureau of Land Management leased the mineral rights in the property known as the "Parcel 1" and "Parcel 4" land to Shell Oil Company in 1961. Rosewood Resources, Inc., is the successor in interest of the leasehold rights of Shell Oil Company and is the plaintiff in Suit Number 323,597.

The State of Louisiana notified the Suit Number 262,928 plaintiffs that $38,535.37 was owed in accordance with L.S.A.-R.S. 47:631 as a tax on the severed oil and gas for the period beginning October 1982. That amount was paid under protest pursuant to L.S.A.-R.S. 47:1576 and Suit Number 262,928 was filed for the recovery of that amount and all amounts paid since, which is in excess of $1,858,000.00.

The State notified Rosewood Resources that oil and gas severance taxes in the amount of $123,772.65 for the period March, 1986 through June, 1987, were being assessed from Rosewood in connection with the Barksdale leases in accordance with L.S.A.-R.S. 47:631. Rosewood paid the assessment under protest on October 15, 1987. Suit Number 323,597 was then filed by Rosewood to recover those amounts plus the assessments paid from July, 1987 through the present, an amount in excess of $314,000.

Two federal court proceedings were intstigated [sic] a week prior to the filing of the first

state court action. The cases were dismissed based upon the Tax Injunction Act, 28 U.S.C. Sec. 1341 which denies Federal Court jurisdiction in a proceeding of this nature.

Appeals were taken to the Fifth Circuit in both cases and the dismissal was affirmed. The Court held in MRT Exploration v. McNamara, 731 F.2d 260 (Ct. App. 5th Cir. 1984), that the Louisiana Department of Revenue and Taxation is taxing only the revenues of the plaintiffs and not the royalty going to the United States and that there is no reason why Louisiana should be any less free from federal interference in the administration or [sic] its own fiscal affairs because these plaintiffs extracted mineral, which came beneath federal lands. The Fifth Circuit then directed the matter to state courts for a determination of the validity of the tax. MRT Exploration, 731 F.2d at 264.

After taking the matter under advisement, the trial court determined that the Louisiana Severance Tax was an "income tax" within the meaning of the Buck Act. The trial court further determined that the 1976 amendment to the 1947 Mineral Leasing Act for Acquired Lands governed the leases at issue.

In supplemental written reasons for judgment, the trial court determined that plaintiffs in Suit Number 262,928 were liable for severance taxes for the period of December, 1979 through September, 1992. From this decision, plaintiffs have appealed, raising two sets of issues.

ISSUES

MAIN DEMAND

The first set of issues addresses the trial court's reasons for judgment entered on the main demand on January 18, 1990, and are as follows: (1) whether the State of Louisiana may impose a severance tax upon the minerals severed from within the confines of Barksdale Air Force Base without infringing upon the limitations established by Article I, Section 8, Clause 17 of the Constitution of the United States; (2) whether the Louisiana Severance Tax, as in effect for the years at issue in these proceedings, is an "income tax" within the meaning of the Buck Act; and (3) whether the 1976 Amendment to the Mineral Leasing Act for Acquired Lands of 1947 is applicable to the leases in the instant case.

I.

Plaintiffs argue that the Louisiana Severance Tax[3] infringes upon Article I, Section 8, Clause 17 of the Constitution of the United States. Plaintiffs contend that the cases of Humble Pipe Line Company v. Waggonner, 376 U.S. 369, 84 S.Ct. 857, 11 L.Ed.2d 782 (1964), and Mississippi River Fuel Corporation v. Cocreham, 382 F.2d 929 (5th Cir. 1967), cert. denied, 390 U.S. 1014, 88 S.Ct. 1264, 20 L.Ed.2d 164 (1968) and 390 U.S. 1015, 88 S.Ct. 1264, 20 L.Ed.2d 164 (1968), effectively settled this issue; therefore, the trial court erred in failing to follow the dictates of these cases.

---

[3] LSA-R.S. 37:631-646.

Article I, Section 8, Clause 17 of the United States Constitution permits the United States to obtain exclusive jurisdiction over lands within a State. It provides as follows:

> The Congress shall have Power . . .
>
> > To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings. . . .

In Waggonner, the United States Supreme Court rejected Louisiana's attempt to impose an ad valorem tax on the property located on Barksdale Air Force Base, a federal enclave. The Court concluded that Congress had exclusive legislative power within the confines of a federal enclave. However, the Supreme Court noted that "[w]hen Congress has wished to allow a State to exercise jurisdiction to levy certain taxes within a federal enclave it has specifically so stated, as in the Buck Act, 4 U.S.C. Secs. 104-110." Waggonner, 376 U.S. at 374, 84 S.Ct. at 860-861.

In Cocreham, the U.S. Fifth Circuit Court of Appeals held that Louisiana could not exact severance taxes on oil and gas produced by the lessee, a private corporation, under mineral lease from the United States on land that was part of Barksdale Air Force Base. In Cocreham, 382

F.2d at 938, the court stated that, "[j]ust as the state cannot tax personal property located on Barksdale Field, it cannot impose a severance tax when the incidence of taxation, the severance of minerals from the soil, takes place on a federal enclave, outside the jurisdiction of the State of Louisiana." The Cocreham court, like the Waggonner court, recognized that Congress could allow a State to exercise jurisdiction to levy taxes within a federal enclave, as in the Buck Act. Cocreham, 382 F.2d at 937.

Thus, the exclusive jurisdiction of Congress, as set forth in Article I, Section 8, Clause 17 of the Constitution of the United States, may be modified by an Act of Congress. The Buck Act is such a modification.

The Buck Act was enacted by Congress in 1940 to enable the states to impose certain taxes including "income taxes" within federal enclaves. Section 106 of this Act reads as follows:

> Sec. 106. Same; income tax
>
> (a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

> (b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.

Sec. 110(c) of the Buck Act defines "income tax" as "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts."

Thus, the right is specifically granted to the State of Louisiana, as a taxing authority, to levy and collect a tax measured by the income from any party "receiving income from transactions occurring or services performed in such area . . . to the same extent and with the same effect as though such area was not a Federal area." See Howard v. Commissioners of the Sinking Fund of the City of Louisville, 344 U.S. 624, 627-629, 73 S.Ct. 465, 467-468, 97 L.Ed. 617, 621-622 (1953).

Therefore, we conclude that the State can impose a severance tax on the minerals severed from within the confines of Barksdale Air Force Base if the Louisiana Severance Tax is an "income tax," as defined in Sec. 110(c) of the Buck Act.

II.

Plaintiffs argue that the Cocreham case resolved the issue of whether the Louisiana Severance Tax was an income tax under the Buck Act.[4] The Cocreham court stated as follows:

---

[4] Plaintiffs also argue that the Louisiana Constitution, Article VII, Sec. 4, differentiates between the income tax and the severance tax. However, we believe that this difference is of no consequence. The key is whether the tax is an income tax under federal law.

> The portion of the Buck Act on which the Collector relies provides that a state may levy an income tax in a federal enclave within the state to the same extent as if the area were not a federal enclave. 4 U.S.C.A. Sec. 106. The Act defines 'income tax' as 'any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.' 4 U.S.C.A. Sec. 110(c). The Louisiana severance tax is 'levied upon all natural resources severed from the soil . . . including . . . minerals such as oil [and] gas . . . ,' LSA-R.S. 47:631, and is measured by the quantity of minerals severed, LSA-R.S. 47:633. Congress has authorized the states to impose an income tax on private persons in federal enclaves, but the Louisiana severance tax is simply not an income tax. We are not free to expand the technical and precise language that Congress has used.
>
> Cocreham, 382 F.2d at 939-940.

The trial court determined that the amendment to paragraphs 7 and 8 of LSA-R.S. 47:633 by Acts 1973, Ex. Sess., No. 6, changed the severance tax on oil, distillates or other natural resources from a tax based on the quantity of the resource to a tax based on the value. The court concluded that with this amendment, the severance tax became an "income tax" within the meaning of the Buck Act, and did not infringe upon the exclusive rights of Congress to legislate for the federal enclave.

As noted by the court in Humble Oil and Refining Company v. Calvert, 478 S.W.2d 926 (Tex.1972), cert. denied, 409 U.S. 967, 93 S.Ct. 293, 34 L.Ed.2d 234, the broad definition of "income tax" contained in the Buck Act was intended by Congress:

> The Congressional intent is strongly stated in the bill's Senate Report where it is stated that '[t]his definition [of income tax] . . . must of necessity cover a broad field because of the great variations to be found between the different State laws. The intent of your committee in laying down such a broad definition was to include therein any State tax (whether known as a corporate-franchise tax, or business-privilege tax, or any other name) if it is levied on, with respect to, or measured by net income, gross income, or gross receipts.

Therefore, we agree with the trial court's determination that the amendment to the Louisiana Severance Tax rendered it an "income tax" within the meaning of the Buck Act. See Humble Oil and Refining Company v. Calvert, 464 S.W.2d 170, 175-176 (Tex. Civ. App. 1971).

Plaintiffs argue that if this court determines the Louisiana Severance Tax is an "income tax" under the Buck Act, the opinion of the trial court must be modified because it recognized that the severance tax on natural gas remained a volume-based tax.

The Louisiana legislature modified the provisions of paragraphs 7 and 8 of LSA-R.S. 47:633 to provide that the imposition of the Louisiana Severance Tax on oil and condensate would thereafter be based on a percentage of the value of the minerals severed at the time and place of the severance. However, no amendment was made to the provisions of paragraph 9 of LSA-R.S. 47:633, which sets forth the method of determining the amount of severance tax due on the severance of natural gas and its equivalents. Therefore, the severance tax on natural gas and its equivalents remains a volume-based tax.

However, because we find that the Louisiana Severance Tax may be imposed as a result of the 1976 amendment to the Mineral Leasing Act for Acquired Lands, this contention is without merit.

III.

Plaintiffs argue that the leases in question never came within the purview of the Mineral Leasing Act of 1920, or the Mineral Leasing Act for Acquired Lands of 1947, and therefore were not subject to the 1976 amendment to the Mineral Leasing Act for Acquired Lands.

The leases in the present case were granted under the express supervisory authority of the Secretary of the Interior, subject to various Public Land Orders.[5] These leases, entitled "Protective Lease of Oil and Gas Lands," were executed by the Director of the Bureau of Land Management. The Public Land Orders were issued as a result of an opinion of the United States Attorney General dated April 2, 1941. The Attorney General was of the opinion that "there was implied authority in the Executive branch to take protective measures in cases where lands acquired by the United States for a specific public purpose are found to contain oil which is being drained by adjoining owners – such lands not being subject to the Mineral Leasing Act of February 25, 1920." 40 Op. Att'y Gen. 41 (1941).

The Mineral Leasing Act of 1920, now codified in 30 U.S.C. Secs. 181-263, was designed to set the framework

---

[5] Public Land Order No. 701 and 2178.

by which minerals underlying certain lands belonging to the United States could be mined. The Act itself indicated that its purpose was to promote the mining of coal, phosphate, oil, oil shale, gas and sodium on the public domain. The Act also set forth the method by which deposits of certain minerals could be disposed of, and granted to the Secretary of the Interior the power to dispose of such minerals. The Act specifically did not apply to Appalachian Forest Act lands, lands in national parks and monuments, and lands withdrawn or reserved for military purposes.

This Act was amended in 1946 to provide that the mineral deposits owned by the United States and subject to the Act excluded (1) Appalachian forest lands, (2) lands in incorporated cities, towns or villages, (3) lands in national parks and monuments, (4) lands acquired under other Acts after February 25, 1920, and (5) lands within naval petroleum and oil shale reserves except as specifically provided for in the Act. The 1946 amendment to this Act deleted the specific reference to lands withdrawn or reserved for military purposes.

The Mineral Leasing Act for Acquired Lands, now codified in 30 U.S.C. Secs. 351-359, was first enacted in 1947. The purpose of this Act was to promote and encourage the development of ore, gas and other minerals on the acquired lands of the United States on a uniform basis under the jurisdiction of the Department of Interior. The Act was also intended to provide for the leasing of federal lands not theretofore subject to leasing under the Mineral Leasing Act of 1920. Section 8 of this Act, now 30 U.S.C. Sec. 357, provides as follows:

> Nothing contained in this Act shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties covered by leases issued under this Act, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

As enacted, Section 3 of the 1947 Act, now 30 U.S.C. Sec. 352, provided that this Act applied to:

> . . . all deposits of coal . . . [and] oil . . . which are owned or may hereafter be acquired by the United States and which are within lands acquired by the United States exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws subject to the provisions hereof.

In 1976, Section 3 of this Act, now 30 U.S.C. Sec. 352, was amended. The amendment deleted the exclusion from the provisions of the Act of properties set apart for military or naval purposes.

The trial court concluded that the 1976 amendment to the Mineral Leasing Act for Acquired Lands should govern in the case of these corporate leases. The court noted that the power of the states to impose severance taxes on minerals extracted by lessees of the United States was strengthened by this amendment. The trial court concluded that all of the disputed taxes were assessed after

the 1976 amendment to the Mineral Leasing Act for Acquired Lands, and the amendment applies to all Louisiana leases regardless of when the leases were executed.

After our review of the foregoing statutes, we find that the trial court was correct in its determination that the 1976 amendment to the Mineral Leasing Act for Acquired Lands is applicable to the leases in the instant case.

ISSUES

RECONVENTIONAL DEMAND

Plaintiffs' second set of issues addresses the trial court's supplemental reasons for judgment on defendant's reconventional demand. The trial court stated as follows:

> Stipulation number 32, submitted by defendant and the Suit Number 262,928 plaintiffs, provides that if the taxes are found by this Court to be owing for the period in dispute in the main demand, that the taxes owed for the period December, 1979 through September, 1982, the period addressed in the reconventional demand, are in the amount of $1,866,146.59 plus legal interest from judicial demand (12-29-82) until paid.

Plaintiffs contend that the trial court's award for the pre-October, 1982 period is erroneous because (1) it grossly misconstrues the precise words of Stipulation Number 32; (2) it fails to recognize and address the fact that the amendments to LSA-R.S. 52:1 in 1982 became effective as of September 10, 1982; (3) it did not address the fact that the change of position announced by the

Department under its letter dated September 30, 1982 indicates that the taxes will only be collected with respect to production subsequent to September, 1982; and (5) [sic] it failed to apply the doctrine of Contemporaneous Construction for all periods prior to the time that the Department announced its change of position as to the imposition of severance taxes on production from within the confines of a federal enclave.

Stipulation Number 32 provided as follows:

> Suit No. 262,928 Plaintiffs acknowledge that the value of the oil severed from the wells located on the Miss Murphy Lands and the Parcel 3 Lands during the months December 1979 through September 1982 was such that the Louisiana severance tax attributable thereto would have been $996,119.53 **if such production is held to be subject to taxation,** that the quantity of gas severed from the wells located on the Miss Murphy Lands and the Parcel 3 Lands during the months December 1979 through September 1982 was such that the Louisiana severance attributable thereto would have been $742,870.34 **if such production is held to be subject to taxation,** and that the value of the condensate severed from the wells located on the Miss Murphy Lands and the Parcel 3 Lands during the months December 1979 through September 1982 was such that the Louisiana severance tax attributable thereto would have been $127,156.72 **if such production is held to be subject to taxation,** all as is more particularly set forth on Exhibit "Q" attached hereto and made a part hereof. (Emphasis ours).

These consolidated cases were submitted to the trial court for decision upon the Joint Stipulation of Facts and briefs of the parties. Stipulation No. 32 clearly provides that taxes for this period are due "if such production is held to be subject to taxation," and the trial court so found. However, plaintiffs' arguments do not address whether the production for this period was subject to taxation. Rather, plaintiffs' arguments focus on whether defendant is in some way precluded from collecting these taxes because of their actions during the period in question. As such, we find that plaintiffs are bound by the wording of the stipulation. Therefore, plaintiffs' contentions are without merit.

CONCLUSION

For the foregoing reasons, the judgment of the trial court is affirmed. Plaintiffs, Arkla, Inc., Pennzoil Producing Company, Arkla Exploration Company, Murphy Oil USA, Inc., and Total Minatome Corporation, are to equally pay their share of one-half of the costs of this appeal. Rosewood Resources, Inc. is to pay the remaining one-half of the costs of this appeal.

AFFIRMED.

APPENDIX B

SUPREME COURT OF LOUISIANA

No. 95-C-0565

MRT EXPLORATION COMPANY
MISSISSIPPI RIVER TRANSMISSION, ET AL

Versus

SHIRLEY MCNAMARA [sub nom RALPH SLAUGHTER]
SECRETARY,
LOUISIANA DEPARTMENT OF REVENUE

PER CURIAM

Granted in part. As to the reconventional demand, the lower courts misconstrued Stipulation No. 32, in which the parties stipulated to the values of the oil, the gas and the condensate severed between December 1979 and September 1982 and to the amount of taxes that would be owed "if such production is held to be subject to taxation."

The trial court misconstrued this stipulation to provide that the stipulated amounts of taxes were owed for the 1979-to-1982 period in the reconventional demand if the court found that taxes were owed in the period covered in the main demand. The court of appeal perpetuated this misconstruction by holding that the trial court found that taxes were owing for the 1979-to-1982 period. Thus, although the parties only stipulated to the amounts of taxes in the event the reconventional demand was meritorious, neither lower court passed on the merits of whether taxes in the stipulated amounts were actually owed for the 1979-to-1982 period.

Accordingly, we remand the matter to the court of appeal to make the determination of whether the production of oil, gas and condensate between December 1979 and September 1982 was subject to taxation. Otherwise, the application is denied.

WATSON, J., not on panel.

APPENDIX C

MRT EXPLORATION COMPANY, MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY OIL CORPORATION PENNZOIL PRODUCING COMPANY, TEXAS GAS EXPLORATION CORPORATION AND ARKLA, INC.	SUIT NO. 262,928 DIVISION "I"
VERSUS	19TH JUDICIAL DISTRICT COURT
SHIRLEY MCNAMARA (SUB NOM LEON TARVER, II), SECRETARY LOUISIANA DEPARTMENT OF REVENUE AND TAXATION	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA
ROSEWOOD RESOURCES, INC.	SUIT NO. 323,597, DIVISION "M"
VERSUS	19TH JUDICIAL DISTRICT COURT
SHIRLEY MCNAMARA (SUB NOM LEON TARVER, II), SECRETARY LOUISIANA DEPARTMENT OF REVENUE AND TAXATION	PARISH OF EAST BATON ROUGE
	STATE OF LOUISIANA

WRITTEN REASONS FOR JUDGMENT

ISSUE

The task this Court has before it is to characterize the Louisiana Oil and Gas Severance Tax, L.S.A.-R.S. 47:631 et seq, to determine if the imposition of that tax on minerals recovered by private entities from the ground beneath

Barksdale Air Force Base collides with the Supremacy Clause of the United States Constitution.

FACTS

The facts of these two consolidated cases are undisputed. The State of Louisiana, the City of Shreveport and the Bossier Levee District conveyed 22,000 acres located in Bossier Parish to the United States in 1930 for the construction of Barksdale Air Force Base. The Bureau of Land Management leased the mineral rights in the portion of the base known as the "Parcel 3 Lands" to Union Producing Company in 1961. Arkla, Inc., Arkla Exploration Company, Pennzoil Producing Company, Total Minatome Corporation and Murphy Oil USA, Inc. are the successors of Union Producing Company's rights. The Bureau leased rights in the property known as the "Miss Murphy USA Lease" to W. R. Stephens and Natural Gas and Oil Corporation. Arkla Exploration Co. and Murphy Oil USA, Inc., are the successors of the leasehold rights of W. R. Stephens and Natural Gas and Oil Corporation. These seven lessees are the plaintiffs in Suit Number 262,928.

The Bureau of Land Management leased the mineral rights in the property known as the "Parcel 1" and "Parcel 4" land to Shell Oil Company in 1961. Rosewood Resources, Inc., is the successor in interest of the leasehold rights of Shell Oil Company and is the plaintiff in Suit Number 323,597.

The State of Louisiana notified the Suit Number 262,928 plaintiffs that $38,535.37 was owed in accordance with L.S.A.-R.S. 47:631 as a tax on the severed oil and gas

for the period beginning October 1982. That amount was paid under protest pursuant to L.S.A.-R.S. 47:1576 and Suit Number 262,928 was filed for the recovery of that amount and all amounts paid since, which is in excess of $1,858,000.00

The State notified Rosewood Resources that oil and gas severance taxes in the amount of $123,772.65 for the period March, 1986 through June, 1987, were being assessed from Rosewood in connection with the Barksdale leases in accordance with L.S.A.-R.S. 47:631. Rosewood paid the assessment under protest on October 15, 1987. Suit Number 323,597 was then filed by Rosewood to recover those amounts plus the assessments paid from July, 1987 through the present, an amount in excess of $314,000.

Two federal court proceedings were instigated a week prior to the filing of the first state court action. The cases were dismissed based upon the Tax Injunction Act, 28 U.S.C. Sec. 1341 which denies Federal Court jurisdiction in a proceeding of this nature.

Appeals were taken to the Fifth Circuit in both cases and the dismissal was affirmed. The Court held in *MRT Exploration v. McNamara*, 731 F.2d. 260 (Ct. App. 5th Cir. 1984), that the Louisiana Department of Revenue and Taxation is taxing only the revenues of the plaintiffs and not the royalty going to the United States and that there is no reason why Louisiana should be any less free from federal interference in the administration or [sic] its own fiscal affairs because these plaintiffs extracted mineral, which came beneath federal lands. The Fifth Circuit then directed the matter to state courts for a determination of

the validity of the tax. *MRT Exploration*, 731 F.2d. at 264. This Court finds that the assessment is proper and orders plaintiffs suit dismissed.

The Louisiana Severance Tax is an "Income Tax" Under the Buck Act

At the onset, we recognize that this issue is not a new one in federal or state jurisprudence. Plaintiff argues that the question of the constitutionality of state taxation of minerals severed from a federal enclave was disposed of by the U.S. Fifth Circuit in *Mississippi Fuel Corporation v. Cockreham* [sic] 382 F.2d. 929 (U.S. Ct. App. 5th Cir. 1967), cert. denied, 390 U.S. 1014 20 L.Ed. 2d 164, 88 S.Ct. 1264, *on rehearing* 390 F.2d. 34 (U.S. Ct. App. 5th Cir. 1968). However, that case followed the decision of the Supreme Court in *Humble Pipe Line vs. Waggoner* [sic], 376 U.S. 269, 84 S.Ct. 857, 11 L.Ed. 782 (1964), in which the State of Louisiana was held unable to assess an ad valorem tax on personal items located within Barksdale. *Humble* dealt specifically with an ad valorem tax. The tax being assessed against these private entities is a tax upon the value of minerals extracted from the ground.

The legislature amended paragraphs 7 and 8 of L.S.A.-R.S. 47:633 by Acts 1973, Ex. Sess., No. 6, to change the severance tax on oil, distillates or other natural resources from a tax based on the quantity of the resource to a tax based upon its value. With this valuation method, the tax falls within the Congressionally authorized taxing power established in the Buck Act, 4 U.S.C.A. Sec. 105-110. We hold that the severance tax is an "income tax" within the meaning of the Buck Act.

The Buck Act was enacted by Congress to enable the states to impose certain taxes including "income taxes" within federal enclaves. "Income tax" is defined very broadly to mean "any tax levied on, with respect to, or measured by, net income, gross income or gross receipts." *Humble Oil and Refining Co. v. Calvert*, 478 S.W.2d. 926 (Tex. 1972) at 929. The Texas Supreme Court in *Humble* concluded that the Texas tax on the extraction of minerals based on the value of the minerals was within the meaning of the Buck Act. By calling the tax a severance tax or an income tax "begs the question."

Mississippi Fuel Corporation v. Cockreham [sic], supra, held that the Louisiana tax was "levied upon all natural resources severed from the soil . . . and is measured by the *quantity* of such minerals severed." *Mississippi River Fuel Corporation, supra,* at 940. That case is no longer dispositive of the characterization of the tax because of the change of the method of calculation of the tax from quantity based to value based.

Since the Buck Act grants to the states the power to tax the receipts of any individual within a federal area, the Louisiana tax is authorized and constitutional.

The Mineral Leasing Act for Acquired Lands as Amended in 1976 Applies to These Leases

This Court is also in accord with defendant's contention that the 1976 amendment to the Mineral Leasing Act for Acquired Lands (30 U.S.C. Sec. 351-359) should govern in the case of these corporate leases. Section 8 of that act provides:

> "Nothing in this act shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties covered by leases issued under this Act, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property or assets of any lessee of the United States."

The power of the states to impose severance taxes on minerals extracted by lessees of the United States was strengthened by an Act of Congress of August 4, 1976 (30 U.S.C.A. Sec. 352) which amended Section 3 by deleting the exception for land "set aside for military or naval purposes."

Plaintiffs' argument that the amended act cannot apply to them since the leases in question were created when the act excluded land used for military bases is not persuasive. Taxing authorities always may impose new taxes which affect existing contracts.

All of the disputed taxes were assessed after the amendment to The Leasing Act for Acquired Lands, 30 U.S.C.A. 352. As a matter of Louisiana law, the act as it currently is, applies to all Louisiana leases regardless of when the leases were executed.

CONCLUSION

The Louisiana General Severance Tax L.S.A.-R.S. 47:633, is a valid, enforceable tax under Louisiana law on the withdrawal of minerals from the earth below surface owned by the U.S. Government. There is no indication

that Congress ever intended private petroleum companies to benefit from the exclusion of federal land from state taxation by allowing them to escape a lawfully enacted tax. The constitutional authority and the machinery to thwart this taxation, if thought unacceptable, is available to Congress. *Commonwealth Edison v. Montana*, 453 U.S. 609, 101 S.Ct. 2946 69 SE2d. 884 (U.S 1981). (White, J., concurrance [sic]). There is no congressional legislation forbidding taxation of this income. Therefore, it is held that the Louisiana Severance Tax is valid and enforceable under Constitutional guidelines and Louisiana law.

Baton Rouge, Louisiana, this 18 day of January, 1990.

William H. Brown
Judge, 19th Judicial District Court

APPENDIX D

MRT EXPLORATION COMPANY, MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY OIL CORPORATION, PENNZOIL PRODUCING COMPANY, TEXAS GAS EXPLORATION CORPORATION, AND ARKLA, INC.	SUIT NO. 262,928 DIVISION "I" 19TH JUDICIAL DISTRICT COURT
VERSUS	PARISH OF EAST BATON ROUGE
SHIRLEY MCNAMARA (SUB NOM LEON TARVER, II), SECRETARY LOUISIANA DEPARTMENT OF REVENUE AND TAXATION	STATE OF LOUISIANA
ROSEWOOD RESOURCES, INC.	SUIT NO. 323,597, DIVISION "M"
VERSUS	19TH JUDICIAL DISTRICT COURT
SHIRLEY MCNAMARA (SUB NOM LEON TARVER, II), SECRETARY LOUISIANA DEPARTMENT OF REVENUE AND TAXATION	PARISH OF EAST BATON ROUGE STATE OF LOUISIANA

SUPPLEMENTAL WRITTEN REASONS FOR JUDGMENT

Stipulation number 32, submitted by defendant and the Suit Number 262,928 plaintiffs, provides that if the taxes are found by this Court to be owing for the period in dispute in the main demand, that the taxes owed for the period December, 1979 through September, 1982, the

period addressed in the reconventional demand, are in the amount of $1,866,146.59 plus legal interest from judicial demand (12-29-82) until paid. Judgment will be signed accordingly.

Baton Rouge, Louisiana, this 21st day of January, 1990.

William H. Brown
JUDGE, 19th Judicial District Court

APPENDIX E

MRT EXPLORATION COMPANY, MISSISSIPPI RIVER TRANSMISSION CORPORATION, MURPHY OIL CORPORATION, PENNZOIL PRODUCING COMPANY, TEXAS GAS EXPLORATION CORPORATION AND ARKLA, INC.	NUMBER 262,928, DIVISION "I"
versus	
SHIRLEY McNAMARA (SUB NOM RALPH SLAUGHTER), SECRETARY LOUISIANA DEPARTMENT OF REVENUE AND TAXATION	19TH JUDICIAL DISTRICT COURT OF LOUISIANA IN AND FOR THE PARISH OF EAST BATON ROUGE
ROSEWOOD RESOURCES, INC.	NUMBER 323,597, DIVISION "M"
versus	
SHIRLEY McNAMARA RALPH (SUB NOM RALPH SLAUGHTER), SECRETARY LOUISIANA DEPARTMENT OF REVENUE AND TAXATION	19TH JUDICIAL DISTRICT COURT COURT OF LOUISIANA IN AND FOR THE PARISH OF EAST BATON ROUGE

JUDGMENT

This matter came on for trial on October 31, 1989 upon the facts set forth in the Joint Stipulation of Facts filed herein on that date. The Court, having considered the Joint Stipulation of Facts and the arguments advanced by counsel for the parties in the briefs filed herein, entered its Written Reasons For Judgment which was signed and filed on January 18, 1990, and its Supplemental Written Reasons For Judgment which was signed and filed herein on January 31, 1990. Plaintiff's Motion To Withdraw Supplemental Written Reasons For Judgment and For Reconsideration of Issues Addressed was denied. The Court is advised by the parties that the amount of one million eight hundred sixty-six thousand one hundred forty-six and 59/100 ($1,866,146.59) dollars set forth in the Supplemental Written Reasons For Judgment includes the sum of five hundred thirty-nine thousand eighty-two and 68/100 ($539,082.68) dollars which is the object of the reconventional demand in those separate proceedings (but related by subject matter) styled *Texas Gas Exploration Corporation v. Shirley McNamara, Secretary, Louisiana Department of Revenue and Taxation*, number 262,929 on the docket of this Court, and therefore the amount of one million eight hundred sixty-six thousand one hundred forty-six and 59/100 ($1,866,146.59) dollars set forth in the Supplemental Written Reasons for Judgment should actually be one million three hundred twenty-seven thousand sixty-three and 91/100 ($1,327,063.91) dollars. The parties have further advised the Court that Pennzoil Exploration and Production Company is now the obligor with respect to the interest of

Pennzoil Producing Company in these proceedings. Therefore,

IT IS ORDERED, ADJUDGED AND DECREED that the demands of the Plaintiffs in both of these consolidated proceedings are hereby rejected.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment is hereby rendered in favor of Plaintiff in reconvention in Docket Number 262,928, the Secretary of the Louisiana Department of Revenue and Taxation, and against the Defendants in reconvention, namely, Mississippi River Transmission Corporation, Arkla, Inc., Murphy Oil USA, Inc., TOTAL MINATOME CORPORATION and Pennzoil Exploration and Production Company, in the following amounts:

Mississippi River Transmission Corporation	$612,063.80
Arkla, Inc.	118,423.98
Murphy Oil USA, Inc.	162,670.66
TOTAL MINATOME CORPORATION	198,004.89
Pennzoil Exploration and Production Company	235,900.58

together with interest at the rates established under and pursuant to La. R. S. 47:1601 from the date such taxes were due until paid, which amounts of interest, through the date of entry of this judgment, are as follows:

Mississippi River Transmission Corporation	$1,106,394.70
Arkla, Inc.	215,060.57
Murphy Oil USA, Inc.	293,076.51
TOTAL MINATOME CORPORATION	359,581.27
Pennzoil Exploration and Production Company	428,400.65

and for all costs of those proceedings.

IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff in Docket Number 323,597, namely Rosewood Resources, Inc., shall pay all costs of that proceeding.

Judgement read, ~~rendered~~ and signed in Baton Rouge, Louisiana on this the *15th* day of September, 1993.

/s/ William H. Brown
WILLIAM H. BROWN
Judge, 19th Judicial
District Court

APPROVED AS TO FORM IF JUDGMENT IS ENTERED ON OR BEFORE SEPTEMBER 30, 1993:

On behalf of Mississippi River Transmission Corporation, Arkla, Inc., Murphy Oil USA, Inc. and Rosewood Resources, Inc.

By: _____

J. Edgerton Pierson, Jr.
La. Bar Roll No. 11000
BLANCHARD, WALKER, O'QUIN & ROBERTS
(A Professional Law Corporation)
Post Office Drawer 1126
Shreveport, Louisiana 71163-1126
(318) 221-6858
Counsel for Mississippi River Transmission Corporation, Arkla, Inc., Murphy Oil USA, Inc. and Rosewood Resources, Inc.

On behalf of Pennzoil Exploration and Production Company

By: _____

Malcolm S. Murchison
La. Bar Roll No. 9836
HARGROVE, GUYTON, RAMEY & BARLOW
(A Professional Law Corporation)
Post Office Box B
Shreveport, Louisiana 71161-0010
(318) 227-1113

Counsel for Pennzoil Exploration and Production Company

On behalf of TOTAL MINATOME CORPORATION

By: _____

Marshall T. Napper
La. Bar Roll No. 9887
SHOTWELL, BROWN & SPERRY
Post Office Box 1591
Monroe, Louisiana 71210
(318) 388-4700

Counsel for TOTAL MINATOME CORPORATION

On behalf of Ralph Slaughter, Secretary of the Louisiana Department of Revenue and Taxation

By: _____

Robert G. Pugh, Sr.
La. Bar Roll No. 10897
PUGH, PUGH AND PUGH
Suite 2100, Commercial National Tower
333 Texas Street
Shreveport, Louisiana 71101-5302
(318) 227-2270

Counsel for the Secretary of the Louisiana Department of Revenue and Taxation

---

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA
SHREVEPORT DIVISION

LEON TARVER II [*sub nom* Arnold A. Broussard], Secretary, Louisiana Department of Revenue and Taxation

versus

H. WAYNE WILSON, Trustee, GEORGE R. SCHURMAN and SCHURMAN OIL & GAS, INC.

CIVIL ACTION
NO. 90-0043
CHIEF JUDGE
TOM STAGG

MEMORANDUM OPINION

The issue in this bankruptcy appeal is whether the State of Louisiana may impose a severance tax on the resources extracted by a mineral lessee from the land within Barksdale Air Force Base in Bossier City, Louisiana. The bankruptcy judge held that it may not, denied the State's motion for summary judgment, and entered judgment in favor of the Trustee.

THE FACTS:

The underlying facts are not in dispute. By act of donation dated November 8, 1930, the City of Shreveport conveyed lands containing approximately 22,000 acres

located in Bossier Parish to the United States for a military post, flying field and bombing range. Pursuant to Act No. 4 of the 1930 legislative session the State donated its interest in the beds of the streams, lakes, bayous and lagoons lying within that tract to the United States. Similarly, the Board of Commissioners of the Bossier Levee District also conveyed its interests in certain other properties within that tract to the United States. Thus, by these acts of donation, the United States acquired a "fee simple title" to the entire tract.[1]

Not surprisingly, the soil beneath Barksdale had reservoirs of oil, gas and other minerals. Apparently, the United States government became concerned that it was losing substantial income as a result of the drainage by mineral lessees of adjoining land owners who were producing minerals from these reservoirs and from reservoirs of adjoining lands. Such concern resulted in an opinion by the Attorney General of the United States to the President that the lands which comprise Barksdale could be leased for mineral development.[2] Relying on this advice from the Attorney General, Presidents Franklin D. Roosevelt and Harry S. Truman issued executive

---

[1] *See Humble Pipe Line Company v. Waggonner*, 376 U.S. 369, 370 (1964).

[2] Appellants' brief, Exhibit D. At this time, the only acts of Congress pertaining to the granting of oil, gas and mineral leases were those relating to Indian lands and domain lands. Of course, the lands comprising Barksdale were neither Indian lands nor domain lands.

orders authorizing the Secretary of the Interior to withdraw[3] or reserve lands of the United States for public purposes.

Pursuant to an act of Congress,[4] the Secretary of the Interior issued Public Land Orders, pertaining to Barksdale which (1) transferred jurisdiction over certain described Barksdale lands from the Department of the Air Force to the Department of Interior; (2) authorized action to prevent Barksdale mineral drainage; (3) prohibited use of Barksdale's surface areas needed by the Air Force; (4) authorized the Air Force to stipulate reservations and restrictions to be contained in the proposed Barksdale leases; and (5) required pre-clearance by the Air Force that any Barksdale mineral lease would not interfere with the primary use of the land as an Air Force base. Under the authority of these orders, oil, gas and mineral leases were issued by the Department of Interior. The lease at issue in this case is denominated "Protective Lease of Oil and Gas Lands Under Authority of Section 441, Revised Statutes: 5 U.S.C. 405" and dated February 1, 1961.[5] Pursuant to this document, the United States leased certain properties comprising Barksdale to Sinclair

---

[3] "Withdrawal" is defined as transferring jurisdiction over an area of federal land from one department, *i.e.*, the United States Air Force, to another department, *i.e.*, the Department of Interior. *See* 43 C.F.R. § 2300.0-5(h).

[4] Now codified at 43 U.S.C. § 141, *et seq.*

[5] Appellants' Brief, Exhibit N.

Oil & Gas Company.[6] Through various operating agreements, the debtors, George R. Schurman and Schurman Oil & Gas, Inc. became the owners of certain leasehold rights in Parcel 2. During their period of operation of the lease, the debtors filed Louisiana Severance Tax Returns with the Louisiana Department of Revenue and Taxation, but indicated on the returns that the severed oil was exempt from taxation. The Department of Revenue and Taxation filed an Application for Payment of Administrative Expenses, asking the Bankruptcy Court to recognize the sum of $33,546.57, plus interest, due with respect to the oil severed from this property for the period August 1, 1985 through August 31, 1986. On December 5, 1989, the bankruptcy judge entered an opinion and order denying the Department's motion for summary judgment, and entering judgment for the debtors.

ANALYSIS OF LAW AND FACTS:

The applicable jurisprudence begins with the 1925 decision of the United States Supreme Court in *Mid-Northern Oil Company v. J. W. Walker*, 268 U.S. 45 (1925). That case involved a suit brought by an oil company to enjoin the enforcement of an annual license tax imposed by the State of Montana upon persons producing petroleum. The oil company argued that the Montana tax, as applied to it, was invalid, because the Company, by assignment of the original leases, was a lessee of the United States of public lands entered as homesteads but

---

[6] This lease involved the particular tract of land that is known as "Parcel 2." *See* Appellees' Brief, Exhibit 1.

not yet granted by a patent, upon which it was engaged in prospecting for and producing crude petroleum under the provisions of the Leasing Act of February 25, 1920. The Company therefore argued that it was a governmental agency, means or instrumentality whose operations could not be taxed by the State.

The Supreme Court did not consider whether the Company, under its leases, was an agency, means or instrumentality of the United States because, in the Court's view, the Leasing Act of 1920 authorized the state taxation at issue. In so holding, the Court relied upon § 32 of the 1920 Act, which provided: "Nothing in this Act shall be construed or held to affect the rights of the states or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States."[7] The Court rejected the contention that § 32 pertained to *existing* rights of the states, *i.e.*, rights existing when the 1920 Act was passed. According to the Court:

> [W]e find nothing in the body of the act which, by any stretch of meaning, purports to detract from or render less certain any such preexisting rights; and, in that view, the theory advanced fails for want of material upon which to operate. It fairly cannot be supposed that Congress would indulge in the altogether idle ceremony of enacting a law to save rights which, being in no way challenged or affected, stood in no need of being saved. The more natural view, and the one we adopt, is that Congress, having provided

---

[7] 30 U.S.C. § 189.

> for leasing the public lands to private corporations and persons whose property, income, business and occupations ordinarily were subject to state taxation, meant by the proviso to say in effect that, although the act deals with the letting of public lands and the relations of the government to the lessees thereof, nothing in it shall be so construed as to affect the right of the States, in respect of such private persons and corporations, to levy and collect taxes as though the government were not concerned. In other words, the purpose of Congress was to remove altogether from the field of controversy, among other questions, the very questions which is here presented, and to put beyond doubt the authority of the states to impose taxes upon lessees in respect of their property, although arising from, and in respect of their taxable rights, although exercised under the act without regard to the origin thereof or to the interest of the United States in the lands or leases.

Mid-Northern Oil Company, supra, at 48-49.

The validity of state taxation pertaining to federal property was next addressed by the high court in the 1952 decision of *Howard v. Commissioners of the Sinking Fund of the City of Louisville,* 344 U.S. 624 (1953). That case involved a challenge to the validity of a Louisville, Kentucky, occupational tax or license fee ordinance as applied to employees of a naval ordnance plant located on federally-owned land. In a brief opinion, the Court upheld the tax relying on the Buck Act, 4 U.S.C. §§ 105, *et seq.* Section 106 of this Act provides:

> (a) No person shall be relieved from liability for any income tax levied by any State, . . , having jurisdiction to levy such a tax, by reason of his residing within a Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.
>
> (b) The provisions of subsection (a) shall be applicable only with respect to income or receipts received after December 31, 1940.

Section 110(c) of the Buck Act defines income tax as "any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts." The Court held that the tax authorized by the ordinance was an "income tax" within the meaning of the Buck Act. *Howard, supra,* at 629. According to the Court:

> The grant was given within the definition of the Buck Act, and this was for *any tax* measured by net income, gross income, or gross receipts. . . . By virtue of the Buck Act, the tax can be levied and collected within the federal area, just as if it were not a federal area. (Emphasis in original.)

Id. Justices Douglas and Black dissented, as they were unable to join in the Court's conclusion that the tax was an "income tax" within the meaning of the Buck Act. According to the dissenters, "Congress has not yet granted local authorities the right to tax the privilege of working for or doing business with the United States." *Id.*

The Louisiana Supreme Court addressed the identical issue presented herein in *Murphy Corp. v. Fontenot*, 225 La. 379, 73 So.2d 180 (1954).[8] Plaintiff in that case sought a refund of severance taxes paid under protest, contending that Article I, Section 8, Clause 17 of the United States Constitution gives the United States exclusive jurisdiction over lands involving Barksdale and, therefore, divested the State of Louisiana of its jurisdiction to collect severance taxes. Article I, Section 8, Clause 17 of the Constitution provides that:

> The Congress shall have Power . . .
>
> > To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; . . . .

According to the Court, the land on Barksdale subject to the lease at issue[9] was not used for the erection of a fort, magazine, arsenal, dock-yard or other needful buildings for military purposes. *Murphy, supra*, at 183. The Court provided that when the federal government

---

[8] As will be discussed, *infra*, the *Murphy* decision is contrary to controlling Fifth Circuit precedent.

[9] The lease in *Murphy* is, for our purposes, identical to the lease at issue in the instant case.

granted to the private oil operators the right of exploration for their private commercial purposes, the government did not intend to take away from the donating state the right to collect severance taxes. *Id.* In so finding, the Court relied upon La. Rev. Stat. 52:1,[10] as well as the transferral of portions of the land from the Secretary of War to the Department of Interior. According to the Court, this withdrawal of land by the Secretary of War caused the property at issue no longer to be exempt from taxation, as the exemption only applied as long as the property was used for military purposes. *Id.* at 184.

In concluding that the State had the power to collect the taxes involved, the Court also cited 2(k) of the lease which required the lessee:

> To pay when due, all taxes lawfully assessed and under the laws of the State of the United States upon improvements, oil and gas produced from the lands hereunder, or other rights, property, or assets of the lessee; . . . .

Significantly, the Court recognized that the lease was *not* made under the Federal Leasing Act of 1920, but the Court noted that the lease itself, especially the paragraph

---

[10] At the time, La. Rev. Stat. 52:1 read as follows:

> The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property. *The property shall be exempt from all taxation, assessments, or charges levied under authority of the state.* (Emphasis added.)

just mentioned, incorporated many provisions of that statute. According to the Court, to hold that a State was without power to collect the severance taxes, the Court would have to ignore the mandatory provisions of the contract. Justice Hawthorne dissented, arguing that since the United States is vested with exclusive jurisdiction pursuant to Article I, Section 8, Clause 17 of the Constitution, Louisiana was without authority to levy and collect the taxes in question.

The Barksdale tax issue was visited by the Fifth Circuit in *Mississippi River Fuel Corporation v. Fontenot*, 234 F.2d 898 (5th Cir. 1956). There, the Fifth Circuit affirmed the district judge's finding that: (1) the Louisiana Severance Tax is not a tax upon property but upon the privilege of severing natural resources from the soil, and in this case no part of the tax burden fell upon the federal government but was payable by the lessee who owned the working interest in the resource produced; (2) that the deeds by which the federal government acquired the title were donations and not sales, and the land did not fall within the purview of Article I, Section 8, Clause 17 of the Constitution, and that exclusive territorial jurisdiction was not ceded by the State of Louisiana to the federal government; and (3) under 2(k) of the lease, the lessees were obligated to pay the tax. The Fifth Circuit did not agree with appellant's contention that the severance tax represented an attempt on the part of the State to exercise legislative and executive jurisdiction over the lands comprising Barksdale Air Force Base. This was based upon

the court's view that the object and purpose of the general severance tax[11] and its effect is not to levy a tax upon the lands included in the base. *Fontenot, supra,* at 901. Instead, the tax was construed as applying not while the oil or gas is in the earth, but when it is severed from the earth. *Id.* At that point, Louisiana law obliges the person severing to file a statement of his business and to pay the tax. Having laid that groundwork, the Court restated the issue thusly:

> Whether a severer of oil and gas, who, if he had taken it from any other land in the state, would unquestionably be liable under the general laws of the state for the severance tax, can carve out of the fact, that it came from land which was a part of Barksdale Field, an exemption for himself against having to pay the tax on severing the oil and gas from the surface and appropriating it to his own use.

Id. at 902. The Court concluded that the tax provision in the lease must be construed so as to give it effect; thus, the operator cannot draw around himself a cloak of immunity because the United States is lessor, but must, as a part of the consideration for the lease and his obligation under the statute, pay the taxes which the severance tax statutes impose. *Id.*

At this point (the mid 1950s), it might appear that the issue presented in this case had been resolved in favor of the State. It clearly was, until the United States Supreme Court decision in *Humble Pipe Line Company v. Waggonner,* 376 U.S. 369 (1964). The issue posed in *Waggonner* was

---

[11] La. Rev. Stat. 47:631-46.

"whether the United States has such exclusive jurisdiction over a 22,000-acre tract of land in Louisiana on which the Barksdale Air Force is located that Louisiana is without jurisdiction to levy an ad valorem tax on privately-owned property situated on the tract." *Id.* at 370. A Louisiana district court and the Louisiana Court of Appeal upheld the tax levied by the State on certain oil-drilling equipment and pipe lines owned, used and kept by the petitioners on the Base. The Louisiana Supreme Court denied review.

The United States Supreme Court reversed. The Court rejected the State's contention that Article I, Section 8, Clause 17 of the Constitution did not apply because the land for the military base was donated, not "purchased," within the meaning of that constitutional provision. On this point, the Court held that under Article I, Section 8, Clause 17, the United States acquired exclusive jurisdiction when the land was ceded to it with consent of the State (except for the State's express reservation as to civil and criminal process) just as if the United States had acquired its title by negotiation and payment of a money consideration. *Id.* at 372.

Contrary to the Fifth Circuit's pronouncement in *Fontenot, supra,* the Court placed no weight on the contractual provision in the lease requiring the lessee to "pay when due, all taxes lawfully assessed and levied. . . ." *Waggonner, supra,* at 374. Said the Court, "We see nothing more in this standard contractual provision than a precaution on the government's part to guard itself against liability for payment of any state taxes 'lawfully assessed'

against its lessee." *Id.* According to Justice Black, a contractual requirement to pay taxes lawfully owing, standing alone, cannot be read as manifesting the purpose of the government to abandoning exclusive jurisdiction over one of its important military enclaves. Significantly, he added, "When Congress has wished to allow a state to exercise jurisdiction to levy certain taxes within in a federal enclave it has specifically so stated, as in the Buck Act, 4 U.S.C. §§ 104-110." *Id.*

In light of the Supreme Court's decision in *Waggonner*, the Fifth Circuit in *Mississippi River Fuel Corporation v. Cocreham*, 382 F.2d 929, 937 (5th Cir. 1967), overruled its decision in *Mississippi River Fuel Corp. v. Fontenot*, discussed *supra*. According to *Cocreham*, the *Waggonner* decision overruled the two alternate grounds underlying the decision in *Fontenot*: (1) a provision of the contract requiring the Company to pay all taxes lawfully assessed; and (2) the severance tax did not interfere with the exclusive jurisdiction by the United States. According to the Fifth Circuit, the Supreme Court thereby reaffirmed a long line of decisions that a state may not legislate for a federal enclave "even if the legislation does not conflict with a regulation of Congress or interfere with a federal function or instrumentality." *Cocreham, supra*, at 937.

The Fifth Circuit also rejected the argument that *Waggonner* did not overrule *Fontenot*, because *Waggonner* involved an ad valorem tax while the earlier decision, like *Cocreham*, involved a severance tax. According to Judge Wisdom:

> While there are differences between the taxes involved, we think that [*Humble Pipe Line Company v. Waggonner*] did not rest on the peculiar

> attributes of the ad valorem tax. It rested instead on the general principle that a state lacks authority to levy any tax in an area under the exclusive jurisdiction of the United States. Just as the state could not tax personal property located on Barksdale Field, it cannot impose a severance tax when the incidence of taxation, the severance of minerals from the soil, takes place on a federal enclave, outside the jurisdiction of the State of Louisiana.

Id., at 938.

Most importantly, the Fifth Circuit also rejected the contention that Congress, in the Buck Act, retroceded to the State of Louisiana jurisdiction to levy the tax. The Buck Act provides that a state may levy an "income tax" in a federal enclave within a state to the same extent as if the area was not a federal enclave. 4 U.S.C. § 106. The Fifth Circuit held, however, that the Louisiana Severance Tax is "simply not an income tax." *Cocreham, supra*, at 940. Instead, the Court recognized that the Louisiana Severance Tax is levied upon all natural resources severed from the soil, including minerals such as oil and gas, and is measured by the quantity of minerals severed.[12]

According to the Court, "We are not free to expand the technical and precise language that Congress has used."

---

[12] The Louisiana statute, as amended, now provides that the tax is measured by the *value* of the minerals severed. *See* La. Rev. Stat. 47:633(7).

Cocreham, supra. In a *per curiam* opinion, the Fifth Circuit panel in *Cocreham* denied a petition for rehearing.[13]

The trustee contends that the issue in this case was squarely resolved in its favor by the decisions in *Cocreham, supra.* The Court agrees. A more direct and specific pronouncement of the Fifth Circuit cannot be found. Nevertheless, appellant suggests that certain changes in the law since the decisions discussed above now require a different result. Specifically, appellant argues that the severance tax is now due and payable

---

[13] *Mississippi River Fuel Corporation v. Cocreham,* 390 F.2d 34 (1968). Because of the importance of that decision to the issue in this case, the decision is quoted at length:

> *Humble Pipe Line Company v. Waggonner* [citation omitted] holds that the United States has exclusive jurisdiction over Barksdale Air Force Base. The fact that in [*Humble*] the tax in question was an ad valorem tax on pipe lines and equipment and not a severance tax, as in the cases now before the court, was irrelevant to the decision. Except with the consent of the United States, the State's taxing power cannot operate within the confines of a federal enclave. Here, the critical fact is that the incidence of taxation, the reduction of fugitive oil and gas to possession and ownership, takes place within the exclusive jurisdiction of the United States. The severance of the oil and gas is the subject of the tax; not the ownership.
>
> * * *
>
> The argument that in its sovereign capacity Louisiana has the power to impose a tax on the severance of oil and gas in the federal enclave collides with the Supremacy Clause. As [*Humble*] holds, a state may not legislate for a federal enclave within the exclusive legislative jurisdiction of Congress.

Id. at 35-36. Judge Rives dissented.

because: (1) the decision in *Commonwealth Edison Company v. Montana*, 453 U.S. 609 (1981) authorizes the State to levy and collect severance taxes; (2) the amendments[14] in 1983 to the Louisiana Severance Tax laws made the severance tax on oil an "income tax" so as to come within the meaning of the Buck Act; (3) a 1976 amendment to the 1947 Mineral Leasing Act for acquired lands[15] constitutes a retrocession to the State of Louisiana of the power to levy such severance taxes; and (4) an amendment in 1982 to La. Rev. Stat. 52:1 empowered the State to impose a severance tax on Barksdale production.[16] Although appellant makes compelling arguments regarding each of these issues, the court concludes that the decision of the bankruptcy judge is correct.

Appellants' least persuasive argument is that the recent Supreme Court decision of *Commonwealth Edison Company v. Montana, supra*, and its interpretation of § 32 of the 1920 Act, has changed the law that is to be applied in this case. The *Commonwealth Edison* case is clearly distinguishable. There, the Supreme Court upheld a severance tax imposed by the State of Montana on each ton of coal mined in the state, including coal mined on federal land, in spite of arguments that the tax violated both the Commerce Clause and Supremacy Clause of the United States Constitution. A careful reading of the case reveals no reference to exclusive federal jurisdiction set

---

[14] La. Rev. Stat. 47:633(7), *supra* n. 11.

[15] 30 U.S.C. §§ 351, *et seq.*

[16] A Louisiana district judge adopted Arguments 2 and 3, above, in an opinion filed January 18, 1990. Appellants' Brief, Exhibit M.

forth in Article I, Section 8, Clause 17 of the Constitution because, apparently, no federal enclave was involved. Instead, the Court was dealing with federal land subject to the concurrent jurisdiction of the state and federal governments. The bankruptcy judge, therefore, correctly concluded that appellants' reliance on *Commonwealth Edison* is misplaced.

Appellant also argues[17] that the 1973 amendment to La. Rev. Stat. 47:633, changing the severance tax on oil and other natural resources from a measurement based upon quantity to a measurement based upon value, brings the severance tax at issue herein within the provisions of the Buck Act. For this proposition, appellant relies upon *Howard, supra*. This argument, however, was squarely rejected by the Fifth Circuit in *Cocreham*, where the Court held that, "The Louisiana Severance Tax is simply not an income tax." *Cocreham*, 382 F.2d at 940. Appellants' argument in this respect erroneously assumes, however, that the 1973 amendment to La. Rev. Stat. 52:1 brings the Louisiana Severance Tax on oil within the purview of the Buck Act. The court cannot believe that the change in the method for calculation of the amount of the tax on the oil severed from a quantity-based tax to a value-based tax alters the Fifth Circuit's conclusion that the tax is not an income tax. This seems clear, as the severance tax at issue is not levied upon any particular taxpayer, but rather upon the natural resources themselves.[18] Additionally, the severance tax is neither levied on nor measured by net income, gross income, or

---

[17] *See* Appellants' Brief at 27-31.

[18] *See* La. Rev. Stat. 47:632.

gross receipts, as required by the Buck Act. Rather, it appears that the severance tax is not imposed upon income at all, but instead upon the increase in the value of one's property.[19] Accordingly, the court concludes that the severance tax in issue is not an "income tax" within the meaning of the Buck Act.[20] The court now turns to the appellants' contention that the 1976 amendment to the 1947 Mineral Leasing Act,[21] makes the Louisiana Severance Tax at issue applicable to this lease. Appellant argues that by this amendment, the full force and effect of 30 U.S.C. § 357 comes to bear on the issue herein. That section provides:

> Nothing contained in this chapter shall be construed to effect the rights of the state or other

---

[19] It is well settled that a mere increase in the value of property is not income but merely an unrealized increase in capital. 1 *Mertens Law of Federal Income Taxation* §§ 5:01 and 5:07 (1987).

[20] The Texas Supreme Court's decision in *Humble Oil & Refining Company v. Calvert*. 478 S.W.2d 926 (Tex. 1972) is to the contrary. In that case, the Court held that an occupation tax on the business or occupation of producing oil and gas constituted an income tax within the meaning of the Buck Act. However, it appears that the Texas Court misconstrued the term "income tax". According to the Court:

> By calling the tax an occupation tax or a severance tax, or whatever else, begs the question. The purpose of the tax is to bring "income" to the state for revenue purposes. . . . Thus, irrespective of what the tax is called, if its purpose is to produce revenue, it is an income or a receipts tax under the Buck Act.

Id. at 175-76. It is submitted that under the Texas Court's decision, every tax is an "income tax" within the meaning of the Buck Act. This court cannot agree.

[21] *See* 30 U.S.C. § 352.

> local authorities to exercise any right which they may have with respect to properties covered by leases issued under this chapter, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

The trustee counters by arguing that the 1947 Act, and the amendments thereto, do not apply to this lease, because, as set forth on the face of the lease in question, the lease was granted under the supervisory authority of the Secretary of the Interior subject to the provisions of Public Land Orders No. 701 and 2178. As originally enacted, 30 U.S.C. § 352 excluded mineral deposits in acquired lands which were set apart for military or naval purposes. The 1976 amendment amended that section by striking out the exclusion for military or naval purposes.

The court seriously doubts whether the 1947 Act was ever intended to apply to the lease at issue.[22] Even so, the court finds that the Supremacy Clause prohibits the imposition of the severance taxes herein. Section 357 of the 1947 Act provides that the Act shall not be construed to affect the rights of a state to exercise "any right which they *may* have . . . . " (Emphasis added.) As of the date of the 1947 Act (as well as the 1976 amendment thereto), the State of Louisiana had absolutely no power to impose a tax upon the severance of minerals underlying Barksdale Air Force Base. Both the United States Supreme Court[23] and the United States Court of Appeals for the Fifth

---

[22] As reflected in 30 U.S.C. § 358, the 1947 Act was intended to apply only to leases granted *prior* to its effective date.

[23] *Humble Pipe Line Company v. Waggonner,*

Circuit[24] specifically found that the State was without power to impose such taxes because the United States has exclusive jurisdiction over Barksdale Air Force Base pursuant to Article I, Section 8, Clause 17 of the Constitution. This difficult issue, therefore, is also resolved in favor of the trustee.

The only issue remaining is whether the 1982 amendment to La. Rev. Stat. 52:1[25] vested a power in the State of Louisiana to impose severance taxes upon Barksdale minerals. It seems clear that it did not. The jurisprudence indicates that subsequent developments in state law are not part of the laws of the ceded area unless. Congress takes action to keep them current. *See, e.g., Board of Supervisors of Fairfax County, Virginia v. United States,* 408 F. Supp. 556, 564 (E.D. 1976). Thus, the only laws that continue in effect are those state laws in effect at the time of the transfer of jurisdiction. Guided by this principle,

---

[24] *Mississippi River Fuel Corporation v. Cocreham, supra.*

[25] As amended in 1982, La. Rev. Stat. 52:1 provides:

A. The United States, in accordance with the seventeenth clause, eighth section of the first article of the Constitution of the United States, may acquire and occupy any land in Louisiana required for the purposes of the federal government. The United States shall have exclusive jurisdiction over the property during the time that the United States is the owner or lessee of the property.

B. The property shall be exempt from all taxation, assessment, or charge levied under authority of the State. *Nothing herein shall be construed or held to affect the rights of Louisiana or other local authority to exercise any rights which they may have, including the right to levy and collect taxes upon the severance of natural resources, or other rights, property, or assets of any lessee of the United States. . . .* (Emphasis added.)

the court concludes that the amendment in question is irrelevant to the issues now before the court.

CONCLUSION:

The bankruptcy judge correctly concluded that the State of Louisiana may not impose a severance tax on the resources extracted by a mineral lessee from the land within Barksdale Air Force Base. Despite a multi-faceted attack on the bankruptcy judge's reasoning and conclusion, and notwithstanding the checkered history of jurisprudence on minerals at Barksdale, no error of fact or law is found. The court has addressed what it perceives to be appellants' principal arguments for reversal.[26] However, this court believes that the Fifth Circuit's latest pronouncement on this issue forecloses any contrary ruling.[27] Accordingly, the bankruptcy judge's decision is AFFIRMED.

A judgment consistent with the terms of this Memorandum Opinion shall issue herewith.

THUS DONE AND SIGNED at Shreveport, Louisiana, this 22nd day of May, 1990.

Tom Stagg, Chief Judge

---

[26] Appellants other arguments are without merit.

[27] *Cocreham, supra.*

APPENDIX G

Constitutional and Statutory Provisions

Mineral Leasing Act for Acquired Lands, Pub. L. No. 382, §§ 3, 8 and 9, 61 Stat. 907, 907, 909 (1947) (codified as amended at 30 U.S.C. §§ 352, 357 and 358).

Sec. 3. Except where lands have been acquired by the United States for the development of the mineral deposits, by foreclosure or otherwise for resale, or reported as surplus pursuant to the provisions of the Surplus Property Act of October 3, 1944 (50 U.S.C., sec. 1611 and the following), all deposits of coal, phosphate, oil, oil shale, gas, sodium, potassium, and sulfur which are owned or may hereafter be acquired by the United States and which are within the lands acquired by the United States (exclusive of such deposits in such acquired lands as are (a) situated within incorporated cities, towns and villages, national parks or monuments, (b) set apart for military or naval purposes, or (c) tidelands or submerged lands) may be leased by the Secretary under the same conditions as contained in the leasing provisions of the mineral leasing laws, subject to the provisions hereof. The provisions of the Act of April 17, 1926 (44 Stat. 301), as heretofore or hereafter amended, shall apply to deposits of sulfur covered by this Act wherever situated. No mineral deposit covered by this section shall be leased except with the consent of the head of the executive department, independent establishment, or instrumentality having jurisdiction over the lands containing such deposit, or holding a mortgage or deed of trust secured by such lands which is unsatisfied of record, and subject to such conditions as that official may prescribe to insure the adequate utilization of the lands for the

primary purposes for which they have been acquired or are being administered: *Provided*, That nothing in this Act is intended, or shall be construed, to apply to or in any manner affect any mineral rights, exploration permits, leases or conveyances nor minerals that are or may be in any tidelands; or submerged lands; or in lands underlying the three mile zone or belt involved in the case of the United States of America against the State of California now pending on application for rehearing in the Supreme Court of the United States; or in lands underlying such three mile zone or belt, or the continental shelf, adjacent or littoral to any part of the land within the jurisdiction of the United States of America.

Sec. 8. Nothing contained in this Act shall be construed to affect the rights of the State or other local authorities to exercise any right which they may have with respect to properties covered by leases issued under this Act, including the right to levy and collect taxes upon improvements, output of mines, or other rights, property, or assets of any lessee of the United States.

Sec 9. Nothing in this Act shall affect any rights acquired by any lessee of lands subject to this Act under the law as it existed prior to the effective date of this Act, and such rights shall be governed by the law in effect at the time of their acquisition; but any person qualified to hold a lease who, on the date of this Act, had pending an application for an oil and gas lease for any lands subject to this Act which on the date the application was filed was not situated within the known geologic structure of a producing oil or gas field, shall have a preference right over others to a lease of such lands without competitive bidding. Any person holding a lease on lands subject

hereto, which lease was issued prior to the effective date of this Act, shall be entitled to exchange such lease for a new lease issued under the provisions of this Act, at any time prior to the expiration of such existing lease.

The Federal Coal Leasing Amendments Act of 1975, Pub. L. No. 94-377, § 12, 90 Stat. 1083, 1090 (1976) (codified as amended at 30 U.S.C. § 352).

Sec. 12. (a) Section 3 of the Mineral Leasing Act for Acquired Lands (30 U.S.C. 352) is amended by striking out "(b) set apart for military or naval purposes, or (c)" and insert in lieu thereof "or (b)".

(b) Such section 3 is further amended by inserting the following after the first sentence thereof: "Coal or lignite under acquired lands set apart for military or naval purposes may be leased by the Secretary, with the concurrence of the Secretary of Defense, to a governmental entity (including any corporation primarily acting as an agency or instrumentality of a State) which produces electrical energy for sale to the public if such governmental entity is located in the State in which such lands are located.".

Buck Act, Pub. L. No. 819, §§ 2(a) and 6(c), 54 Stat. 1059, 1060 (1940) (codified as amended at 4 U.S.C. § 106(a) and § 110(c)).

Sec. 2. (a) No person shall be relieved from liability for any income tax levied by any State, or by any duly constituted taxing authority therein, having jurisdiction to levy such a tax, by reason of his residing within a

Federal area or receiving income from transactions occurring or services performed in such area; and such State or taxing authority shall have full jurisdiction and power to levy and collect such tax in any Federal area within such State to the same extent and with the same effect as though such area was not a Federal area.

Sec. 6. (c) The term "income tax" means any tax levied on, with respect to, or measured by, net income, gross income, or gross receipts.

Constitution of the State of Louisiana of 1921, Article X:

§ 1. Taxing power; specific taxes

* * *

Income taxes. Equal and uniform taxes may be levied upon net incomes, and such taxes may be graduated according to the amount of the net income. Public officials shall not be exempted. Reasonable exemptions may be allowed.

§ 21. Severance tax on natural resources

Section 21. **Levy; rate; allocation to parishes.** Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance; but such tax on sulphur shall not exceed One Dollar and Three Cents ($1.03) per long ton of 2,240 pounds, provided that the present severance tax on sulphur shall be, and is, hereby fixed at One Dollar and Three Cents ($1.03) per long ton of 2,240 pounds, effective as of the twentieth day after the present Legislature shall have adjourned, and shall be collected and expended in accordance with existing laws for the collection of severance taxes on natural resources. Such

natural resources may be classified for the purpose of taxation and such taxes may be predicated upon either the quantity or value of the products at the time and place of severance. No severance tax shall be levied by any Parish or other local subdivision of the State.

* * *

Constitution of the State of Louisiana of 1974, Article VII:

§ 4. Income Tax; Severance Tax; Political Subdivisions

Section 4. **(A) Income Tax.** Equal and uniform taxes may be levied on net incomes, and these taxes may be graduated according to the amount of net income. However, the state individual and joint income tax schedule of rates shall never exceed the rates set forth in Title 47, Section 32 of the Louisiana Revised Statutes on January 1, 1974. Federal income taxes paid shall be allowed as a deductible item in computing state income taxes for the same period.

(B) Severance Tax. Taxes may be levied on natural resources severed from the soil or water, to be paid proportionately by the owners thereof at the time of severance. Natural resources may be classified for the purpose of taxation. Such taxes may be predicated upon either the quantity or value of the products at the time and place of severance. No further or additional tax or license shall be levied or imposed upon oil, gas, or sulphur leases or rights. No additional value shall be added to the assessment of land by reason of the presence of oil, gas, or sulphur therein or their production therefrom. However, sulphur in place shall be assessed for ad valorem taxation to the person, firm, or corporation having

the right to mine or produce the same in the parish where located, at no more than twice the total assessed value of the physical property subject to taxation, excluding the assessed value of sulphur above ground, as is used in sulphur operations in such parish. Likewise, the severance tax shall be the only tax on timber; however, standing timber shall be liable equally with the land on which it stands for ad valorem taxes levied on the land.

Louisiana Revised Statutes, Title 47:

§ 31. Individuals, corporations and trusts subject to tax

There shall be levied, collected, and paid for each taxable year a tax upon the net income of residents and nonresidents, estates, trusts and corporations, as hereinafter provided.

(1) Resident individuals. Every Person residing within the state, or the personal representative in the event of death, shall pay a tax on net income from whatever source derived, except as hereinafter exempted.

Every natural person domiciled in the state, and every other natural person who maintains a permanent place of abode within the state or who spends in the aggregate more than six months of the taxable year within the state, shall be deemed to be a resident of this state for the purpose of determining liability for income taxes under this Chapter.

(2) Nonresident individuals. Every nonresident shall pay a tax upon such net income as is derived from property located, or from services rendered, or from business transacted within the state, or from sources within the state, except as hereinafter exempted.

(3) Corporations. Corporations shall be taxed on net income from sources within the state, as hereinafter set out.

(4) Domestic real estate investment trusts. Trusts shall be taxed on net income from whatever source derived, except as otherwise exempted.

(5) Foreign real estate investment trusts. Foreign real estate investment trusts shall be taxed on net income from sources within the state, as hereinafter set out.

§ 631. Imposition of tax

Taxes as authorized by Section 21 of Article X of the Constitution of Louisiana[1], are hereby levied upon all natural resources severed from the soil or water, including all forms of timber, including pulp woods, and turpentine and other forest products; minerals such as oil, gas, natural gasoline, distillate, condensate, casinghead gasoline, sulphur, salt, coal, lignite and ores; also marble, stone, gravel, sand, shells and other natural deposits; and the salt content in brine.

§ 632. Taxes payable by owners; lien and privilege created

A. These taxes shall be paid by the owner or proportionately by the owners thereof at the time of the severance and become due and exigible monthly, as herein provided; they shall operate as a first lien and privilege on the natural resources which lien and privilege shall follow the natural resources into the hands of

---

[1] The cited provision is from the 1921 Constitution. See, now Article 7, § 4 of the 1974 Constitution.

third persons whether in good or bad faith, and whether the same be found in a manufactured or unmanufactured state. In addition, oil and gas leases, interests and minerals, mineral rights, royalty interests, timber contracts, and rights of any kind to the ownership of any natural resource severed from the soil or water, shall be subject to seizure and sale for the payment of the tax levied in this Part in preference to all other claims, liens, and privileges.

B. These taxes shall not be due or owed by any political subdivision of the state if the natural resource severed was owned and severed by that political subdivision for its own use.

§ 633(7)(a) [As in effect prior to 1973 amendment]. Rates of tax

The taxes on natural resources severed from the soil or water levied by R.S. 47:631 shall be predicated on the quantity severed and shall be paid at the following rates:

* * *

(7)(a) On oil of 22 gravity and below, eighteen cents per barrel of 42 gallons.

(b) On oil above 22 gravity and not above 28 gravity, twenty cents per barrel of 42 gallons.

(c) On oil above 28 gravity and not above 31 gravity, twenty-one (21¢) cents per barrel of 42 gallons.

(d) On oil above 31 gravity and not above 32 gravity, twenty-two and one-half cents per barrel of 42 gallons.

(e) On oil above 32 gravity and not above 36 gravity, twenty-four and one-half cents per barrel of 42 gallons.

(f) On oil above 36 gravity and not above 43 gravity, twenty-five cents per barrel of 42 gallons.

(g) On oil above 43 gravity, twenty-six cents per barrel of 42 gallons.

(h) Where the liquid hydrocarbons produced by a well consist of oil only and it is determined by the collector of revenue that such well is incapable of producing an average six barrels of oil per day, the tax rate applicable to the oil severed from such well shall be one-half of the schedule set forth in this paragraph (7).

§ 633(7)(a) [As in effect after 1973 amendment]. Rates of tax

The taxes on natural resources severed from the soil or water levied by R.S. 47:631 shall be predicated on the quantity or value of the products or resources severed and shall be paid at the following rates:

* * *

(7)(a) On oil twelve and one-half percentum of its value at the time and place of severance. Such value shall be the higher of (1) the gross receipts received from the first purchaser, less charges for trucking, barging and pipeline fees, or (2) the posted field price. In the absence of an arms length transaction or a posted field price, the value shall be the severer's gross income from the property as determined by R.S. 47:158(C).

* * *

§ 633(8) [As in effect prior to 1973 amendment]. Rates of tax

The taxes on natural resources severed from the soil or water levied by R.S. 47:631 shall be predicated on the quantity severed and shall be paid at the following r tes:

* * *

(8) On distillate, condensate, or similar natural resources severed from the soil or water either with oil or gas, twenty cents per barrel of 42 gallons; natural gasoline, casinghead gasoline and other natural gas liquids, butane, propane, ethane, or methane recovered through processing gas after separation of oil, distillate, condensate or similar natural resources shall be taxed as gas under subsection (9) below based on equivalent gas volumes; provided that, for the purpose of the levy of this tax, measurement of such natural resources taxable under this paragraph may be made at or near the mouth of the well, or at the place where the resources taxed by this paragraph are ultimately separated or removed from the oil or gas, all measurements being made under rules and regulations to be promulgated by the collector of revenue.

§ 633(8) [As in effect after 1973 amendment]. Rates of tax

The taxes on natural resources severed from the soil or water levied by R.S. 47:631 shall be predicated on the quantity or value of the products or resources severed and shall be paid at the following rates:

* * *

(8) On distillate, condensate, or similar natural resources severed from the soil or water either with oil or

gas, twelve and one-half percentum of gross value at the time and place of severance. For the levy of this tax, gross value shall be defined by R.S. 47:633(7)(a). However, natural gasoline, casinghead gasoline and other natural gas liquids, including but not limited to ethane, methane, butane or propane, all of which occur naturally or which are recovered through processing gas after separation of oil, distillate, condensate, or similar natural resources shall not be subject to the levy provided for in this Paragraph, but shall be subject to the levy provided for in R.S. 47:633(9).

§ 633(9). Rates of tax

The taxes on natural resources severed from the soil or water levied by R.S. 47:631 shall be predicated on the quantity or value of the products or resources severed and shall be paid at the following rates:

* * *

(9) On natural gas and, based on equivalent gas volumes, natural gasoline, casinghead gasoline, and other natural gas liquids, including but not limited to ethane, methane, butane or propane, seven cents per thousand cubic feet, measured at a base pressure of 15.025 pounds per square inch absolute and at the temperature base of sixty degrees Fahrenheit; provided that whenever the conditions of pressure and temperature differ from the above bases, conversion of the volume from these conditions to the above bases shall be made in accordance with the Ideal Gas Laws with correction for deviation from Boyle's Law, which correction must be made unless the pressure at the point of measurement is two hundred pounds per square inch gauge, or less, all in accordance

with methods and tables generally recognized by and commonly used in the natural gas industry. For all purposes of computing standard cubic feet of gas under this Section the barometric pressure shall be assumed to be 14.7 pounds per square inch absolute at the place of measurement.

* * *

1892 La. Acts No. 12.

1. The United States shall have power to purchase or condemn in the manner prescribed by law, upon making just compensation therefor, any land in the State of Louisiana, not already in use for public purposes, required for custom houses, court houses, arsenals, national cemeteries, or for other purposes of the government of the United States.

2. The United States may enter upon and occupy any land which may have been or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said State, and the service of civil process of said State therein, and shall hold the same exempt from all State, parochial, municipal or other taxation.